II. COMMITTEE ACTIONS AND FILINGS OF THE PARTIES PRIOR TO THE AUGUST 4, 2010 HEARING ON PRE-TRIAL MOTIONS

b. Pre-Trial Filings regarding Witnesses and Subpoenas

IN THE SENATE OF THE UNITED STATES
SITTING AS A COURT OF IMPEACHMENT

In re:	)
Impeachment of G. Thomas Porteous, Jr.,	)
United States District Judge for the	)
Eastern District of Louisiana	)

JUDGE G. THOMAS PORTEOUS, JR. PRELIMINARY DESIGNATION OF WITNESSES, REQUEST FOR SUBPOENAS, RELATED FUNDING AND IMMUNITY ORDERS, AND RESPONSE ADDRESSING STIPULATIONS RELATED TO ARTICLES I, III, and IV

NOW BEFORE THE SENATE, comes respondent, the Honorable G. Thomas Porteous, Jr., a Judge of the United States District Court for the Eastern District of Louisiana, by and through counsel, and files his Preliminary Designation of Witnesses, Request for Subpoenas and Relating Funding, Requests for Immunity, and Stipulations Related to Articles I, III, and IV.[1] Judge Porteous respectfully submits as follows:

1. Preliminary Designation of Witnesses and Requests for Subpoenas, Related Funding, and Immunity Orders

Judge Porteous anticipates that he may call the following witnesses[2] during the impeachment trial and requests that subpoenas be issued to each of these witnesses and

[1] The limitation of this pleading to Articles I, III, and IV of the Articles of Impeachment is based upon the issue raised in the June 9, 2010 letter sent by Professor Jonathan Turley to the Chair and Vice-Chair of the Senate Impeachment Trial Committee addressing the conflict issue relating to the Marcottes and Article II.

[2] Judge Porteous notes that this is only a preliminary designation of witnesses and that additional witnesses may be added in advance of trial. The list is limited, in part, because discovery is still on-going and because, to date, a substantial amount of the material that Judge Porteous believes is necessary to prepare his defense, and which he has requested from the House Managers, has not been produced. Indeed, the House Managers have refused to produce most of this information or even to identify what portion of

that funding be provided for the travel and related expenses of these witnesses in order to secure their appearance at trial.

1. Daniel Petalas
2. Peter Ainsworth
3. Richard E. Windhorst, III
4. Don M. Richard
5. Sidney Powell
6. S.J. Beaulieu
7. Christopher Cox
8. Kristie Escuider
9. Andree Braud
10. Nancy Langston
11. Current Judges of the U.S. District Court for the Eastern District of Louisiana (to be designated)
12. Any witness listed by the House Managers

At this time Judge Porteous does not anticipate that any of these witnesses will require an immunity order.

As noted above, Judge Porteous also requests that, given the strain on his financial resources caused by this litigation, the Senate Impeachment Trial Committee

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that information is in their possession. As a result, Judge Porteous is in the process of preparing third-party discovery requests to the U.S. Department of Justice and the U.S. Court of Appeals for the Fifth Circuit, among others, in an effort to secure this essential information despite the House Managers refusal to provide it. Additional witness designations may be added to his list as more of the necessary discovery is made available.

provide a mechanism for funding the travel expenses of any witnesses subpoenaed at Judge Porteous' request. As the facts of this case demonstrate, Judge Porteous is without the substantial financial resources necessary to defend this case, particularly when compared to the vast resources of the House Managers. In order to ensure that the Senate Impeachment Trial Committee is able to build a complete record in this matter, Judge Porteous is asking for travel funding for his witnesses. Further, to the extent the Committee believes further briefing is necessary prior to addressing this funding request, Judge Porteous is willing to address the issue more fully in a separate pleading.

2. Response to House Managers Request for Stipulations

Judge Porteous is continuing to review the stipulations proposed by the House Managers. Those stipulations include a general request that Judge Porteous stipulate to the authenticity of the documents listed in the House Managers' Exhibit List and more than 300 proposed factual stipulations.

As to the House Managers request for a stipulation as to the authenticity of the exhibits included on their Exhibit List, Judge Porteous is prepared to execute a stipulation to the authenticity of any and all of the documents relating to Articles I, III, and IV that have not been redacted, although specifically reserving any objections to the admissibility of the documents.

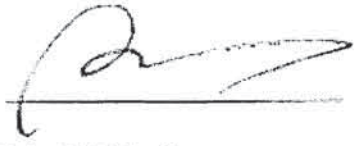
With regard to the proposed factual stipulations relating to Articles I, III, and IV, Judge Porteous anticipates being in a position to provide a response to the proposed stipulations including a stipulation-by-stipulation statement of his position shortly and not later than June, 18, 2010. Additionally, to the extent there is an objection to a proposed

stipulation, the grounds will be outlined in the response. Judge Porteous opposes the procedure proposed by the House Managers with regard to the stipulations and does not believe that it is appropriate to impose any stipulations in the absence of the agreement of the parties.

3. Request for Stipulations

Judge Porteous is in the process of preparing proposed stipulations for the consideration of the House Managers. These stipulations likely will not be presented to the House Managers until sometime after the pretrial motions deadline currently set on June 15, 2010.

Respectfully submitted,



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Counsel for G. Thomas Porteous, Jr.,
United States District Judge for the Eastern District of Louisiana

Submitted: June 9, 2010

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of June 2010, a copy of the foregoing pleading was served by electronic mail on the House Managers, through counsel, at the following e-mail addresses:

Alan Baron - abaron@seyfarth.com

Mark Dubester - Mark.Dubester@mail.house.gov

Harold Damelin - Harold.Damelin@mail.house.gov

Kirsten Konar - kkonar@seyfarth.com

Jessica Klein, Clerk - Jessica.Klein@mail.house.gov

Richard W. Westling

170028

THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL
WASHINGTON DC

JONATHAN TURLEY
J.B. AND MAURICE C. SHAPIRO PROFESSOR
OF PUBLIC INTEREST LAW

June 9, 2010

By Electronic and Regular Mail

The Honorable Claire McCaskill, Chair
The Honorable Orrin G. Hatch, Vice Chair
Senate Impeachment Trial Committee
United States Senate
Russell Senate Office Building, Room B-34A
Washington, D.C. 20002

Re: The Impeachment Trial of Judge G. Thomas Porteous

Dear Senator McCaskill and Senator Hatch:

Last night, I was informed by the staff director, Mr. Derron Parks, that the Senate Impeachment Trial Committee expects the submission of Judge Porteous's Preliminary Designation of Witnesses as to Article II, Request for Subpoenas as to Article II, Related Funding and Immunity Orders as to Article II, and Response Addressing Stipulations as to Article II by noon on Thursday, June 10, 2010.

As the staff is aware, I only joined the case in a couple weeks ago. As I explained in a letter I sent yesterday, new counsel in the case from the law firm of Bryan Cave LLP were only retained as counsel on June 9, 2010. At the time, Mr. Westling agreed to remove himself from matters related to Article II and I will work exclusively with Bryan Cave on that article. I will also serve as co-lead counsel with Mr. Westling on Articles I, III, and IV.

This change was prompted by the appearance of a conflict of interest raised by the House and Senate counsel related to that Article. As a result, we will no longer have the benefit with regard to Article II of the experience and preparation of Mr. Westling and the other lawyers who have been working on this matter for the past year. In my letter to the Committee, I asked that we discuss the need for a continuation of the case in light of the change in the defense team.

THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL
2000 H STREET, NW • WASHINGTON, DC 20052 • 202-994-7001 • 202-994-9811

THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL
WASHINGTON DC

JONATHAN TURLEY

J.B. AND MAURICE C. SHAPIRO PROFESSOR
OF PUBLIC INTEREST LAW

Although we understand the Committee's desire to proceed expeditiously on this matter to a trial, it would produce a gross unfairness and would violate fundamental due process to require new counsel to designate witnesses, identify exhibits or take any of the other preliminary steps without having an opportunity to learn the full facts underlying this Article. Bryan Cave and I would require 45-60 days to review fully the documents and records in the case and be in a position to engage in pre-trial exchanges of information, motions in limine, stipulations and the like. The desire to keep to an expedited schedule for trial should not be allowed to trump basic due process concerns.

In order not to delay matters unnecessarily, we agreed to file on these matters vis-à-vis Articles I, III, and IV. We do so despite the fact that new counsel was not in a position to be fully informed as to the underlying facts. However, on Article II, the demand for filings tomorrow and the following week would raise serious ethical and procedural problems in forcing counsel to effectively file critical motions with little or no knowledge of the salient facts.

In a brief conversation with Mr. Parks, it was made clear that the Committee would not even entertain an extension in due to the change in representation in the last twenty-four hours – despite the fact that federal counsel routinely allow for such changes in these circumstances. We were also told that tomorrow's filing is preliminary and made be amended. In order to avoid unnecessary litigation, we will indeed make a preliminary filing by the noon deadline. However, this is done with the express understanding that counsel does not (and cannot) supply a full accounting on these issues and may have to substantially amend these filings. We will also seek a continuation of the schedule by 60 days to allow the defense to properly prepare and fully represent Judge Porteous. Once again, it is not clear why an arbitrary trial date should control over the serious due process issues raised by the schedule. Following the same schedule as the last impeachment proceeding involving former Judge Alcee Hastings, the trial would not have been scheduled until February 2011. We are not asking for such a schedule, but the insistence on trying this case before the August recess creates an abbreviated and unfair process. We will seek to address these issues in tomorrow's meeting and will file a formal motion for a continuance in the case by Friday. We would be happy to discuss these issues directly with you and opposing counsel at any time of your convenience.

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WASHINGTON DC

JONATHAN TURLEY

J.B. AND MAURICE C. SHAPIRO PROFESSOR
OF PUBLIC INTEREST LAW

Respectfully,

Jonathan Turley

Jonathan Turley
Co-Lead Counsel to Judge G. Thomas Porteous

Daniel C. Schwartz
P.J. Meitl

BRYAN CAVE LLP

cc: Senate Counsel
House Counsel

In The Senate of the United States
Sitting as a Court of Impeachment

In re:	)
Impeachment of G. Thomas Porteous, Jr.,	)
United States District Judge for the	)
Eastern District of Louisiana	)
	)

JUDGE G. THOMAS PORTEOUS JR. PRELIMINARY DESIGNATION OF WITNESSES, REQUEST FOR SUBPOENAS, RELATED FUNDING AND IMMUNITY ORDERS, AND RESPONSE ADDRESSING STIPULATIONS RELATED TO ARTICLE II

NOW BEFORE THE SENATE, comes respondent, the Honorable G. Thomas Porteous, Jr., a Judge of the United States District Court for the Eastern District of Louisiana, by and through counsel, and files his Preliminary Designation of Witnesses, Request for Subpoenas and Relating Funding, Requests for Immunity, and Stipulations related to Article II.

As detailed in a letter sent to the Senate Impeachment Trial Committee yesterday, June 9, 2010, Judge Porteous has retained, just this week, new counsel to represent him in relation to Article II (hereinafter referred to as "Article II counsel").[1] This change was prompted by the suggestion of a conflict of interest raised by the House and Senate counsel in regards to lead counsel Richard Westling and his law firm as to issues related to Article II. As a result of this bifurcation of representation as to the Articles of Impeachment, Judge Porteous's Article II counsel will no longer have the benefit of the experience and preparation of Mr. Westling and the other lawyers who have been

[1] Article II counsel consists of co-lead counsel Professor Jonathan Turley and Daniel Schwartz and P.J. Meitl of Bryan Cave LLP.

working on this matter for the past year with regard to Article II. Therefore, Article II Counsel must review the facts and issues related to Article II from the beginning – a process that is just beginning and will likely take several weeks, if not months. Therefore, Article II counsel had requested, through letter and conversation with Committee Staff, for an extension of time, beyond June 10, 2010, to file this pleading.[2] This request was based on counsel's ethical concerns regarding their representation of Judge Porteous, issues of due process, and basic fairness. Moreover, although aware of the need to expeditiously move this matter to trial, this request was premised on the notion that due process concerns should outweigh procedural deadlines. Committee staff declined this request and demanded that Article II counsel file the instant pleading by noon on June 10, 2010, in advance of the meeting of all counsel regarding "witnesses, immunity, etc." as outlined in the May 26, 2010 scheduling order.[3]

Judge Porteous, through Article II counsel, are in no position and have no ability to respond fully and adequately to the issues raised in this pleading and intend to substantially supplement and/or amend this filing as they review the evidence and issues related to Article II. Judge Porteous, through Article II counsel, reserves the right to add,

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[2] Judge Porteous' Article II counsel is cognizant of the Committee's May 26, 2010 Scheduling Order which required that "Applications for modification [of scheduling deadlines] shall be made no later than two (2) business days prior to the due date." Article II counsel, however, was not retained as of June 4, 2010, the relevant date for seeking an extension of the instant pleading. As a result, Judge Porteous is not filing an out-of-time motion for an extension at this time. If the Committee believes additional briefing regarding the necessity for the change in counsel, the requested delay, or other matters, Judge Porteous' counsel is prepared to provide such briefing.

[3] Alternatively, Article II counsel proposed that the deadline for filing this pleading be extended, at the very least, until after Article II counsel met with the Committee and the House Managers on June 10, 2010 at 2:00 p.m., as previously scheduled by the Committee's May 26, 2010 Scheduling Order. This request was also denied.

remove, or amend all and any portion of this filing.[4] Nevertheless, out of respect for the Committee and its orders, and given no other option for redress of the request by for an extension by the Committee, Judge Porteous, through Article II counsel, submits the instant preliminary filing.

1. Preliminary Designation of Witnesses

As this preliminary stage, without the benefit of his counsel's review of all facts and circumstances underlying Article II, Judge Porteous may reasonably call individuals falling into the following categories:

- Any witness listed by the House Managers.
- Any witness listed by counsel for Judge Porteous as to Article I, III, and IV.
- Judges of the 24th Judicial District Court for the Parish of Jefferson and/or State of Louisiana between 1984 and 2004.
- Staff or employees of Judges of the 24th Judicial District Court for the Parish of Jefferson and/or State of Louisiana between 1984 and 2004.
- Judges of the U.S. District Court for the Eastern District of Louisiana between 1984 and 2004.
- Staff or employees of Judges of the U.S. District Court for the Eastern District of Louisiana between 1984 and 2004.
- Judges of the Fifth Circuit of the United States Court of Appeals.
- Any individuals related to or associated with Louis or Lois Marcotte.
- Individuals, other than the Marcottes, employed as bail bondsmen in the Parish of Jefferson or the State of Louisiana between 1984 and 2004.
- Any member of Judge Porteous staff, including but not limited to law clerks, interns, or administrative staff between 1984 and 2004.

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[4] Moreover, the responses provided herein, are also limited because discovery is still on-going and because, to date, a substantial amount of the material that Judge Porteous believes is necessary to prepare his defense, and which he has requested from House Managers, has not been produced.

- Representatives of, or individuals employed by, restaurants or dining establishments frequented by the Marcottes and/or Judge Porteous between 1984 and 2004.

- Other judicial officers, including but not limited to, Justices of the Peace for the Parish of Jefferson and/or State of Louisiana between 1984 and 2004.

- Any individual involved with or with knowledge of the Wallace criminal conviction and the subsequent Motion to Set Aside the Conviction, including attorneys representing Mr. Wallace.

- Any individual connected to the issuance of or underwriting of bonds that were set or adjudicated by Judge Porteous between 1984 and 2004.

- Members of Judge Porteous's immediate family.

- Any other individual with knowledge of the alleged conduct within Article II.

2. Requests for Subpoenas

At this preliminary date, and without sufficient time to fully identify specific individuals to testify, Judge Porteous cannot request that specific subpoenas be issued. Judge Porteous does intend to request that subpoenas be issued for specific individuals related to his defense of Article II and will supplement this pleading on a timely basis.

3. Related Funding

Despite not being able, at this time, to identify specific individuals who will serve as likely witnesses in relation to Article II, Judge Porteous does request, given the strain in his financial resources caused by this litigation, that the Senate Impeachment Trial Committee provide a mechanism for funding the travel expenses (including applicable per diem fees) of any witnesses subpoenaed at Judge Porteous' request.

As the facts of this case demonstrate, Judge Porteous is without the substantial financial resources necessary to defend this case, particularly when compared to the vast resources of the House Managers. In order to ensure that the Senate Impeachment Trial Committee is able to build a complete record in this matter, Judge Porteous is asking for

travel funding for any witnesses, located outside the Washington metropolitan area. Otherwise, Judge Porteous will be deprived of the ability to provide witnesses in his defense.

Judge Porteous also requests that the Committee provide for travel funding related to Judge Porteous's own required travel to Washington, D.C., so that he may fully participate in his own defense and attend all necessary proceedings. Similarly, Judge Porteous requests that the Committee reimburse him for any out-of-pocket legal expenses (outside of attorneys fees) incurred as a result of his defense of this action.[5]

4. Immunity Orders

At this preliminary date, and without sufficient time to fully identify specific individuals to testify, Judge Porteous cannot identify and request specific immunity orders. Judge Porteous anticipates that certain immunity orders may be required, including, but not necessarily limited to, those for judges (both state and federal), other judicial officers, staff and employees of judges and judicial officers, and other individuals, beyond the Marcottes, employed as bail bondsmen in the Parish of Jefferson and/or the State of Louisiana. Judge Porteous will supplement this pleading on a timely basis.

5. Response to House Managers Request for Stipulations

Having just entered the case, Judge Porteous' Article II counsel has only begun to review the stipulations proposed by the House Managers. The House Manager's List contains over 300 proposed factual stipulations. Although only ten of the stipulations proposed are specifically identified as relating to Article II, a number of other stipulations

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[5] Judge Porteous is willing to separately and more fully brief the related funding issue if the Committee believes that to be useful.

are potentially relevant and material to Judge Porteous' Article II defense. Judge Porteous anticipates being able to respond to the proposed stipulations after review of the relevant facts and circumstances related to Article II. Judge Porteous opposes the procedure proposed by the House Managers with regard to the stipulations and objects to any procedure that would impose any stipulations in the absence of the agreement of the parties. In light of the lack of knowledge on the basis for these stipulations, Judge Porteous must currently oppose the stipulations pending further review when such opposition may be withdrawn.

6. Request for Stipulations

Having just entered the case, Judge Porteous' Article II counsel has not yet prepared proposed stipulations. Judge Porteous will present these stipulations to the House Managers in a timely manner after review of the relevant facts and circumstances related to Article II.

Respectfully submitted,

/s/ Jonathan Turley
Jonathan Turley
2000 H Street, N.W.
Washington, D.C. 20052
(202) 994-7001

/s/ Daniel C. Schwartz
Daniel C. Schwartz
P.J. Meitl
BRYAN CAVE LLP
1155 F Street, N.W., Suite 700
Washington, D.C. 20004
(202) 508-6000

Counsel for the G. Thomas Porteous Jr.
United States District Court Judge for the
Eastern District of Louisiana

Dated: June 10, 2010

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2010, I caused copies of the foregoing to be served by electronic means on the House Managers, through counsel, at the following email addresses:

Alan Baron – abaron@seyfarth.com

Mark Dubester – mark.dubester@mail.house.gov

Harold Damelin – Harold.damelin@mail.house.gov

Kirsten Konar – kkonar@seyfarth.com

Jessica Klein – jessica.klein@mail.house.gov

/s/ P.J. Meitl

In The Senate of the United States

Sitting as a Court of Impeachment

In re:	)
Impeachment of G. Thomas Porteous, Jr.,	)
United States District Judge for the	)
Eastern District of Louisiana	)

PRELIMINARY DESIGNATONS BY THE HOUSE OF REPRESENTATIVES OF WITNESSES, REQUESTS FOR SUBPOENAS, REQUESTS FOR IMMUNITY AND STIPULATIONS

Pursuant to the Senate Impeachment Trial Committee's Scheduling Order of May 26, 2010, the House of Representatives ("House"), through its Managers and counsel, respectfully submits this preliminary designation of witnesses, requests for subpoenas, requests for immunity, and stipulations. The House respectfully submits:

I. PRELIMINARY DESIGNATIONS OF WITNESSES AND REQUESTS FOR SUBPOENAS AND IMMUNITY ORDERS

The House seeks subpoenas for several individuals to require their attendance at the impeachment trial.[1] As a practical matter, the House may end up excusing some of these witnesses, as they may become unnecessary because of the stipulation process or as the House makes decisions that may streamline the case. Further, it is possible that some of these witnesses may end up being called solely as rebuttal witnesses, but because of their relationship to Judge Porteous or their reluctance to testify, it is important that they be under subpoena so they are available to provide testimony on short notice if so

[1]Because this is a preliminary designation, the House understands that additional witnesses may be added to the list.

required. The House expects to work out arrangements with those individuals so that they would be under subpoena but "on call" if their testimony were required.

Several of these witnesses have been immunized in prior proceedings (including the House Impeachment Task Force Hearings), and, accordingly, the House requests that the Senate apply for immunity orders in connection with these witnesses' testimony at the Impeachment trial.

The House seeks trial subpoenas for the following individuals, and seeks immunity orders as indicated below:

1. Hon. G. Thomas Porteous, Jr., (Immunity Order)
   c/o Richard Westling, Esq.

2. Jacob Amato, Jr. (Immunity Order)
   c/o Ralph Capitelli, Esq.

3. Robert Creely (Immunity Order)
   c/o Ralph Capitelli, Esq.

4. Leonard Levenson, Esq. (Immunity Order)
   c/o Franz Zibilich, Esq.

5. Donald Gardner, Esq.
   c/o Ralph Whalen, Esq.

6. Rhonda Danos (Immunity Order)
   c/o Pat Fanning, Esq.

7. Joseph Mole, Esq.

8. Louis Marcotte
   c/o Martin Regan, Esq.

9. Lori Marcotte

10. Jeffrey Duhon

11. Aubrey Wallace

12. Mike Reynolds

13. Ronald Bodenheimer
c/o Edward Castaing, Esq.

14. Bruce Netterville, Esq. (Immunity Order)
c/o Robert Habans, Esq.

15. Claude Lightfoot, Esq.

16. William Greendyke, Esq.

17. FBI Special Agent DeWayne Horner

18. Former FBI Special Agent Bobby Hamil

19. Former FBI Special Agent Cheyanne Tackett

II. REQUEST FOR STIPULATIONS

The House, by way of a letter to Judge Porteous's counsel dated April 9, 2010, sought stipulations as to the authenticity of all the documents on the exhibit list.[2]

The House, by way of a letter to Judge Porteous's counsel dated April 19, 2010, provided 308 factual stipulations for counsel's consideration.[3]

By way of a letter to the House Impeachment Staff dated April 21, 2010, Judge Porteous's counsel represented that he would "work through both the documents and the factual stipulations as expeditiously as possible and will likely address both of these issues on a rolling basis in an effort to keep this process moving."[4] In that letter, counsel

[2]See Letter from Alan I. Baron, Esq. to Richard Westling, Esq., April 9, 2010 (attached to this pleading as "Attachment 1").

[3]See Letter from Alan I. Baron, Esq. to Richard Westling, Esq., with attachment, April 19, 2010 (attached to this pleading as "Attachment 2").

[4]See Letter from Richard W. Westling, Esq. to Alan Baron, et al, April 21, 2010 at 2 (attached to this pleading as "Attachment 3").

also represented that he would "begin to evaluate possible stipulations that we might seek on behalf of Judge Porteous."

As of the time of filing this motion, the House has not received any response from counsel to the House's proposed stipulations, nor has the House received proposed stipulations from counsel.

The stipulation process constitutes an important way of focusing the disputed factual issues in this case and reducing the need for testimony or other evidence on facts that are not in genuine dispute. Thus, as a practical matter, there should be no question as to the authenticity of the various business records and bank records of Judge Porteous and other witnesses; nor should there be any legitimate question as to the authenticity of various court records – some of which are certified. Further, many of the requests for factual stipulations are based on the content of those records and, for counsel's convenience, cite evidentiary and other record support.

The House further requests that the Committee follow the practice that the Senate Impeachment Trial Committee employed in the Hastings Impeachment proceeding, and, in essence, accept proposed stipulations which are established by the record where there is not likely to be conflicting evidence, and where there have been no other reasonable grounds offered by a party for a failure to stipulate.[5]

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[5]See Disposition of Proposed Stipulations of Fact Submitted by the House Managers - Sixth Order, Senate Impeachment Trial Committee (Judge Hastings), June 23, 1989, reprinted in Report of the Senate Impeachment Trial Committee on the Articles against Judge Alcee Hastings, S. Hrg. 101 194, Pt. 1, 101st Cong., 1st Sess. at 855 (1989). That document is attached as "Attachment 4." More precisely, the categories of the proposed stipulations that were not accepted by the Senate involved stipulations where:

> one or more of the following circumstances was present: where the proposed stipulation was solely or principally dependent on the testimony of witnesses, such as FBI agents, and/or internal FBI documents, whose

The House further notes that in Judge Porteous's Replication, he did not set forth competing versions of facts, but primarily argued for various reasons that the conduct alleged did not rise to the level of "high crimes or misdemeanors." We request that the Senate direct Judge Porteous to respond to the House's proposed stipulations by a date certain, and to provide specific factual bases to explain any failure to stipulate. We further request that the House be provided the opportunity to file its response addressing Judge Porteous's objections, and that the Senate reserve its right to accept as proven the House's proposed stipulations.

WHEREFORE, the House requests that the Senate Impeachment Trial Committee issue subpoenas and seek immunity orders for the persons identified in this pleading; and further requests that the Senate Impeachment Trial Committee require Judge Porteous to respond promptly and by a certain date to the proposed stipulations by the House.

> credibility and accuracy Judge Hastings has questioned ...; where they were central to a disputed issues, upon which conflicting testimony clearly will be presented at the proceedings ...; where it was concluded that the evidence could be simply and better introduced through a witness' full testimony on a matter or through an unexcerpted transcript of a recorded conversation rather than by excerpts or characterization of testimony or conversations ...; where the proposed stipulations contained characterizations or inferences, rather than simply factual recitations or events ...; where it was not possible to find sufficient support in the evidence known or cited in House filings, where there was a serious question about the admissibility of the evidence which should be considered at the proceedings ... and where Judge Hastings interposed specific and substantial objections. Where it was possible to revise a proposed stipulation to correct factual inaccuracies, correlate it more closely to the documentary materials and evidence from which it was drawn or to accommodate a valid objection or concern of the committee, a proposed revision has been made...."

"Disposition of Proposed Stipulations" at 3-4, Hastings Impeachment Report at 857-58.

Respectfully submitted,

THE UNITED STATES HOUSE OF REPRESENTATIVES

By

Adam Schiff, Manager

Bob Goodlatte, Manager

Alan I. Baron
Special Impeachment Counsel

Managers of the House of Representatives: Adam B. Schiff, Bob Goodlatte, Zoe Lofgren, Henry C. "Hank" Johnson, F. James Sensenbrenner, Jr.

June 8, 2010

Attachment One

Congress of the United States
House of Representatives
Washington, DC 20515

April 9, 2010

Richard Westling, Esq.
Ober Kaler Grimes & Shriver
1401 H Street, N.W. Suite 500
Washington, D.C. 20005

Re: Impeachment of Judge G. Thomas Porteous –
Request for Stipulation as to Authenticity

Dear Mr. Westling,

As part of our attempt to proceed in an orderly fashion and minimize unnecessary delays in connection with the trial, we request that you stipulate to the authenticity of the exhibits on the Exhibit List that we have provided you by separate letter dated March 23, 2010. We specifically recognize that in stipulating to authenticity, you would continue to preserve your right to object to the admissibility of any such exhibit on the basis of relevancy, hearsay, or any other grounds other than authenticity.

If there are specific exhibits referenced on the Exhibit List to which you are unwilling to stipulate as to authenticity, we request that you identify those exhibits and provide the reasons. We are also willing to answer questions you may have concerning any of the exhibits.

If you have any questions, please do not hesitate to contact Mark H. Dubester, 202-226-2404, or Harry Damelin, 202-226-0109, so we can discuss and try to resolve any issue you might have.

Sincerely,

Alan I. Baron
Special Impeachment Counsel

Attachment Two

Congress of the United States
Washington, DC 20515

April 19, 2010

Richard Westling, Esq.
Ober Kaler Grimes and Shriver
1401 H Street, N.W. Suite 500
Washington, D.C. 20005

Re: Impeachment of Judge G. Thomas Porteous
Request for Factual Stipulations

Dear Mr. Westling,

As a part of our attempt to proceed in an orderly fashion and minimize unnecessary delays in connection with the impeachment trial of Judge Porteous, and as also suggested by you in your April 9, 2010 letter to Senators McCaskill and Hatch, we are providing the attached list of 308 proposed factual stipulations for your review and agreement.

All of the proposed stipulations are based on documents or testimony that is part of the Task Force's Hearing record. Where appropriate, the proposed stipulation cites to particular documents or testimony that support the stipulation.

We are available to discuss any issues you may have with regard to the proposed stipulations. We are also amenable to consider any additional factual stipulations you may wish to submit on behalf of Judge Porteous. Please feel free to contact Harold Damelin (202-226-0144) or Mark Dubester (202-226-2404) with regard to any issues you have regarding the enclosed stipulations.

Sincerely,

Alan I. Baron
Special Impeachment Counsel

Enclosures

April 19, 2010

Stipulations—Impeachment of G. Thomas Porteous, Jr.

III. Judge G. Thomas Porteous[1]

1. Judge Porteous was born on December 14, 1946.

2. Judge Porteous married Carmella Porteous on June 28, 1969.

3. Judge Porteous and his wife Carmella had four children: Michael, Timothy, Thomas and Catherine.

4. Judge Porteous graduated from Louisiana State University Law School in May 1971.

5. From approximately October 1973 through August 1984, Judge Porteous served as an Assistant District Attorney in Jefferson Parish, Louisiana. Judge Porteous was permitted to hold outside employment while working as an Assistant District Attorney.

6. From January 1973 until July 1974, Judge Porteous was a law partner of Jacob Amato, Jr. at the law firm of Edwards, Porteous & Amato.

7. Attorney Robert Creely worked at the law firm of Edwards, Porteous, & Amato for some period of time between January 1973 and July 1974.

8. Judge Porteous was elected to be a judge of the 24th Judicial District Court in Jefferson Parish, Louisiana in August 1984. He took the bench on December 19, 1984, and remained in that position until October 28, 1994.

9. On August 25, 1994, Judge Porteous was nominated by President Clinton to be a United States District Court Judge for the Eastern District of Louisiana.

10. Judge Porteous's confirmation hearing before the Senate Judiciary Committee was held on October 6, 1994.

11. Judge Porteous was confirmed as a United States District Court Judge for the Eastern District of Louisiana by the United States Senate on October 7, 1994.

12. Judge Porteous received his judicial commission on October 11, 1994.

13. Judge Porteous was sworn in as a United States District Court Judge for the Eastern District of Louisiana on October 28, 1994.

14. Judge Porteous's wife, Carmella, passed away on December 22, 2005.

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[1] The numerical designations of the headings in these Stipulations correspond to the related sections in the Report of the House Committee on the Judiciary, which accompanied H. Res. 1031, 111th Cong. 2d Sess. (2010).

IV. Procedural Background

15. Starting in or about late 1999, the Department of Justice and the Federal Bureau of Investigation commenced a criminal investigation of Judge Porteous. The investigation ended in early 2007, without an indictment being issued.

16. By letter dated May 18, 2007, the Department of Justice submitted a formal complaint of judicial misconduct regarding Judge Porteous to the Honorable Edith H. Jones, Chief Judge of the United States Court of Appeals for the Fifth Circuit. (Ex. 4).

17. Upon receipt of the Department of Justice's May 18, 2007 complaint letter, the Fifth Circuit appointed a Special Investigatory Committee (the "Special Committee") to investigate the Department of Justice's allegations of misconduct by Judge Porteous.

18. Judge Porteous was initially represented by attorney Kyle Schonekas in the Special Committee proceedings.

19. Kyle Schonekas withdrew from representing Judge Porteous in the Special Committee proceedings on or before July 5, 2007.

20. On or before August 2, 2007, attorney Michael H. Ellis represented Judge Porteous in the Special Committee proceedings.

21. On or before October 16, 2007, attorney Michael H. Ellis withdrew from representing Judge Porteous in the Special Committee proceedings because of "irreconcilable differences."

22. A hearing was held before the Special Committee on October 29 and 30, 2007 (the "Fifth Circuit Hearing"). At the Fifth Circuit Hearing, Judge Porteous represented himself, testified pursuant to a grant of formal immunity, cross-examined witnesses and called witnesses on his own behalf.

23. After the Fifth Circuit hearing, the Special Committee issued a report to the Judicial Conference of the Fifth Circuit dated November 20, 2007, which concluded that Judge Porteous committed misconduct which "might constitute one or more grounds for impeachment." (Ex. 5).

24. On December 20, 2007, by a majority vote, the Judicial Council of the Fifth Circuit accepted and approved the Special Committee's November 20, 2007 Report and concluded that Judge Porteous "had engaged in conduct which might constitute one or more grounds for impeachment under Article I of the Constitution." The Judicial Council of the Fifth Circuit thereafter certified these findings and the supporting records to the Judicial Conference of the United States. (Ex. 6 (a)).

25. On June 17, 2008, the Judicial Conference of the United States determined unanimously, upon recommendation of its Committee on Judicial Conduct and Disability, to transmit to the Speaker of the House a certificate "that consideration of impeachment of the United States District Judge G. Thomas Porteous (E.D. La.) may be warranted." (Ex. 7).

26. On September 10, 2008, the Judicial Council of the Fifth Circuit issued an "Order and Public Reprimand" against Judge Porteous, ordering that no new cases be assigned to Judge Porteous and suspending Judge Porteous's authority to employ staff for two years or "until Congress takes final action on the impeachment proceedings, whichever occurs earlier." (Ex. 8).

27. On September 17, 2008, the House of Representatives of the 110th Congress passed H. Res. 1448, which provided in pertinent part: "Resolved, That the Committee on the Judiciary should inquire whether the House should impeach G. Thomas Porteous, a judge of the United States District Court for the Eastern District of Louisiana."

28. On January 13, 2009, the House of Representatives passed H. Res. 15, continuing the authority of H. Res. 1448 for the 111th Congress.

VIII. Article I—The Liljeberg Case

29. Jacob Amato, Jr. and Robert Creely formed a law partnership in about 1975 that lasted until 2005. (Ex. 16).

30. While Judge Porteous was on the state bench, he requested cash from Robert Creely on several occasions. Creely provided cash to Judge Porteous in response to those requests. (Exs. 11, 12 and 16).

31. Judge Porteous knew that some portion of the money he received from Robert Creely came from Jacob Amato, Jr. as well. (Task Force Hearing I, Exs. 16, 24).

32. There came a time where Robert Creely expressed resistance to providing monies to Judge Porteous while he was on the state bench. (Task Force Hearing I and Ex. 10).

33. Beginning in 1988, Judge Porteous began increasingly to assign Robert Creely curatorships. (Ex. 11).

34. In 1988, Judge Porteous assigned at least 18 curatorships to Robert Creely. (Exs. 189–190).

35. In 1989, Judge Porteous assigned at least 21 curatorships to Robert Creely. (Exs. 189–190).

36. In 1990, Judge Porteous assigned at least 33 curatorships to Robert Creely. (Exs. 189–190).

37. In 1991, Judge Porteous assigned at least 28 curatorships to Robert Creely. (Exs. 189–190).

38. In 1992, Judge Porteous assigned at least 44 curatorships to Robert Creely. (Exs. 189–190).

39. In 1993, Judge Porteous assigned at least 28 curatorships to Robert Creely. (Exs. 189–190).

40. In 1994, Judge Porteous assigned at least 20 curatorships to Robert Creely. (Exs. 189–190).

41. The Amato & Creely law firm earned a fee of between $150 and $200 for each curatorship that Judge Porteous assigned to Robert Creely.

42. As a result of Robert Creely being assigned at least 192 curatorships by Judge Porteous, the Amato & Creely law firm earned fees of at least $37,500. (Exs. 189 and 190).

43. Judge Porteous received a portion of the fees associated with the curatorships he assigned to Robert Creely. (Ex. 12).

44. At the Fifth Circuit Hearing, Judge Porteous testified under oath as follows regarding his receipt of money for Robert Creely and Jacob Amato, Jr.:

> Q: When did you first start getting cash from Messrs. Amato, Creely, or their law firm?
>
> A: Probably when I was on State bench.
>
> Q: And that practice continued into 1994, when you became a Federal judge, did it not?
>
> A: I believe that's correct. (Ex. 10).

45. At the Fifth Circuit Hearing, Judge Porteous admitted under oath that the cash he received from Robert Creely "occasionally" followed his assignment of curatorships to Creely. (Ex. 10).

46. At the Fifth Circuit Hearing, Judge Porteous testified under oath as follows regarding the relationship between Mr. Creely's resistance to giving Judge Porteous money and Judge Porteous's assignment of curatorships to Mr. Creely:

> Q: Do you recall Mr. Creely refusing to pay you money before the curatorships started?
>
> A: He may have said I needed to get my finances under control, yeah. (Ex. 10).

47. At the Fifth Circuit Hearing, Judge Porteous questioned Jacob Amato, Jr. as follows regarding the reasons why Amato and Creely gave Judge Porteous money:

> Porteous: [J]ust so I'm clear, this money that was given to me, was it done because I'm a judge, to influence me, or just because we're friends?

Amato: Tom, it's because we're friends and we've been friends for 35 years. And it breaks my heart to be here. (Ex. 20).

48. At the Fifth Circuit Hearing, Judge Porteous testified under oath as follows regarding the amount of money he received from Jacob Amato, Jr. and Robert Creely or their law firm:

Q: Judge Porteous, over the years, how much cash have you received from Jake Amato and Bob Creely or their law firm?

A: I have no earthly idea.

Q: It could have been $10,000 or more. Isn't that right?

A: Again, you're asking me to speculate. I have no idea is all I can tell you.

Q: When did you first start getting cash from Messrs. Amato, Creely, or their law firm?

A: Probably when I was on State bench.

Q: And that practice continued into 1994, when you became a Federal judge, did it not?

A: I believe that's correct. (Ex. 10).

49. Attorney Donald Gardner is a long time friend of Judge Porteous.

50. While Judge Porteous was a state judge, he assigned more than 50 curatorships to Donald Gardner. (Ex. 36).

51. At the Fifth Circuit Hearing, Judge Porteous testified under oath as follows regarding his receipt of cash from Don Gardner:

Q: Now, other than Messrs. Amato and Creely, who else had—what other lawyers—lawyer friends of yours have given you money over the years?

A: Given me money?

Q: Money, cash.

A: Gardner may have. Probably did.

Q: And when is the last time Mr. Gardner gave you money?

A: Before I took the Federal bench, I'm sure.

Q: Okay. And do you recall how much?

A: Absolutely not. (Ex. 10).

52. On January 16, 1996, as a Federal judge, Judge Porteous was assigned a civil case, Lifemark Hospitals of La., Inc. v. Liljeberg Enterprises, Inc. (Ex. 50).

53. The Liljeberg case was filed in 1993 and had been assigned to other judges before being transferred to Judge Porteous on January 16, 1996.

54. The Liljeberg case was set for a non-jury trial before Judge Porteous on November 4, 1996.

55. On September 19, 1996, the Liljebergs filed a motion to enter the appearances of Jacob Amato, Jr. and Leonard Levenson as their attorneys. Judge Porteous granted the motion on September 26, 1996. (Exs. 51 (a) and 51 (b)).

56. Jacob Amato, Jr. and Leonard Levenson were hired by the Liljebergs on a contingent fee basis, and, pursuant to the terms of their retainer, if the Liljebergs prevailed in the litigation they would both receive substantial fees. (Exs. 18 and 52).

57. The motion to enter Jacob Amato, Jr.'s appearance identified him as being with the law firm of Amato & Creely. (Ex. 51 (a)).

58. On October 1, 1996, attorney Joseph Mole on behalf of his client, Lifemark, filed a Motion to Recuse Judge Porteous. (Ex. 52).

59. When the Liljebergs filed their Motion to Recuse, Joseph Mole, counsel for Lifemark, was unaware of any prior financial relationship between Amato & Creely and Judge Porteous. (Ex. 52).

60. The Liljebergs filed their Opposition to the Motion to Recuse, on October 9, 1996. (Ex. 53).

61. Lifemark filed its Reply to the Opposition to the Motion to Recuse on October 11, 1996. (Ex. 54).

62. The Liljebergs filed a Memorandum in Opposition to Lifemark's Reply on October 15, 1996. (Ex. 55).

63. On October 16, 1996, Judge Porteous held a hearing on the Motion to Recuse. (Ex. 56).

64. Both Leonard Levenson and Jacob Amato, Jr. were present in the courtroom on behalf of the Liljebergs at the October 16, 1996 hearing on the Motion to Recuse. (Ex. 56).

65. At the recusal hearing on October 16, 1996, Jacob Amato, Jr. made no statements concerning his prior financial relationship with Judge Porteous. (Ex. 56).

66. At the October 16, 1996 hearing on the Motion to Recuse, the following colloquy occurred:

The Court: Let me make also one other statement for the record if anyone wants to decide whether I am a friend with Mr. Amato and Mr. Levenson—I will put that to rest for the answer is affirmative, yes. Mr. Amato and I practiced the law together probably 20-plus years ago. Is that sufficient? . . . So if that is an issue at all, it is a non-issue.

* * *

The Court: Yes, Mr. Amato and Mr. Levenson are friends of mine. Have I ever been to either one of them's house? The answer is a definitive no. Have I gone along to lunch with them? The answer is a definitive yes.

* * *

Mr. Mole: The public perception is that they do dine with you, travel with you, that they have contributed to your campaigns.

* * *

The Court: The first time I ran, 1984, I think is the only time when they gave me money.

* * *

The Court: [T]his is the first time a motion for my recusal has ever been filed . . . . But does that mean that any time a person I perceive to be friends who I have dinner with or whatever that I must disqualify myself? I don't think that's what the rule suggests . . . . Courts have held that a judge need not disqualify himself just because a friend, even a close friend, appears as a lawyer

* * *

The Court: Well you know the issue becomes one of, I guess the confidence of the parties, not the attorneys . . . . My concern is not with whether or not lawyers are friends . . . . My concern is that the parties are given a day in court which they can through you present their case, and they can be adjudicated thoroughly without bias, favor, prejudice, public opinion, sympathy, anything else, just on law and facts . . . .

I have always taken the position that if there was ever any question in my mind that this Court should recuse itself that I would notify counsel and give them the opportunity if they wanted to ask me to get off . . . .

> [In the *Bernard* case] the court said Section 450 requires not only that a Judge be subjectively confident of his ability to be even handed but [that an] informed, rational objective observer would not doubt his impartiality . . . . I don't have any difficulty trying this case . . . . [I]n my mind I am satisfied because if I had any question as to my ability, I would have called and said, "Look, you're right." (Ex. 56).

67. Judge Porteous denied the Motion to Recuse in open court on October 16, 1996. (Ex. 56).

68. On October 17, 1996, Judge Porteous issued a written order confirming the denial of the Motion to Recuse. (Ex. 57).

69. Lifemark retained Donald Gardner on March 11, 1997 to be part of its trial team. (Ex. 60 (a)).

70. Lifemark's contract with Donald Gardner provided that he would be paid $100,000 for entering his appearance and that, among other terms, he would receive another $100,000 if Judge Porteous withdrew or the case settled. (Exs. 64 and 65).

71. Judge Porteous conducted a bench trial in the Liljeberg case from June 16, 1997 through June 27, 1997 and then from July 14, 1997 until its conclusion on July 23, 1997. (Ex. 50).

72. At the conclusion of the Liljeberg trial in July 1997, Judge Porteous took the case under advisement.

73. Jacob Amato, Jr. took Judge Porteous to numerous lunches while Judge Porteous had the Liljeberg under advisement. (Task Force Hearing I and Exs. 21 (b)–(c) and 24).

74. Don Gardner took Judge Porteous to lunches and dinners while Judge Porteous had the Liljeberg case under advisement. (Ex. 36).

75. From May 20 through 23, 1999, while Judge Porteous had the Liljeberg case under advisement, a bachelor party was held in Las Vegas, Nevada, for Judge Porteous's son, Timothy.

76. Among the people present in Las Vegas for Timothy Porteous's bachelor party were Judge Porteous, Robert Creely and Donald Gardner.

77. At the Fifth Circuit Hearing Judge Porteous testified under oath as follows regarding Robert Creely's payment for Judge Porteous's hotel room at Caesars Palace during the trip to Las Vegas for Timothy Porteous's bachelor party:

> Q: Well, once you get to Las Vegas, you have to stay in a room right?

A: Right.

Q: You didn't pay for the room, did you?

A: It appears I did not.

Q: And do you know who paid for it?

A: It appears Mr. Creely paid for it.

Q: Mr. Creely, that's right. Now, that was over a period of approximately four days, as I recall, from the records?

A: Three or four.

Q: Three or four. That exceeded $250 total for the room, correct?

A: Yea.

Q: Did that ever appear on your judicial - -

A: No, it did not.

Q: – your form that you file with the administrative office?

A: No, it did not.

Q: It did not. Although you considered that a gift, correct?

A: Yea, it was a gift. (Ex. 10, page 140).

78. At the Fifth Circuit Hearing, Judge Porteous testified under oath as follows concerning Robert Creely's payment of a portion of the bill for Timothy Porteous's bachelor party dinner in Las Vegas:

A: We had one outside meal that I can recall.

Q: But you didn't pay for that meal, did you?

A. No, I did not.

Q: Who paid for it?

A: A variety – I think Creely did and maybe some other people picked up various portions. (Exs. 10, 11 and 378).

79. On June 28, 1999, after his son's wedding, and while the Liljeberg case was under advisement, Judge Porteous solicited money from Jacob Amato, Jr. while the two men were on a boat during a fishing trip.

80. After Judge Porteous solicited money from Jacob Amato, Jr. on June 28, 1999, Amato provided cash to Judge Porteous in an envelope.

81. At the Fifth Circuit Hearing, Judge Porteous testified under oath as follows regarding his receipt of money from Jacob Amato, Jr. in or about June of 1999:

> Q: Do you recall in 1999, in the summer, May, June, receiving $2,000 for [sic: should be "from"] them?
>
> A: I've read Mr. Amato's grand jury testimony. It says we were fishing and I made some representation that I was having difficulties and that he loaned me some money or gave me some money.
>
> Q: You don't – you're not denying it; you just don't remember it?
>
> A: I just don't have any recollection of it, but that would have fallen in the category of a loan from a friend. That's all.
>
> * * *
>
> Q: [W]hether or not you recall asking Mr. Amato for money during this fishing trip, do you recall getting an envelope with $2,000 shortly thereafter?
>
> A: Yeah. Something seems to suggest that there may have been an envelope. I don't remember the size of an envelope, how I got the envelope, or anything about it.
>
> * * *
>
> Q: Wait a second. It is the nature of the envelope you're disputing?
>
> A: No. Money was received in [an] envelope.
>
> Q: And had cash in it?
>
> A: Yes, sir.
>
> Q: And it was from Creely and/or –
>
> A: Amato.

Q: Amato?

A: Yes.

Q: And it was used to pay for your son's wedding.

A: To help defray the cost, yeah.

Q: And was used –

A: They loaned – my impression was it was a loan.

Q: And would you dispute that the amount was $2,000?

A: I don't have any basis to dispute it. (Ex. 10).

82. After Judge Porteous received the cash from Jacob Amato, Jr. in or about June of 1999, while he still had the Liljeberg case under advisement, Judge Porteous did not disclose this fact to Joseph Mole, counsel for Lifemark.

83. In late 1999, while Judge Porteous still had the Liljeberg case under advisement, Jacob Amato, Jr. and Robert Creely paid for a party at the French Quarter Restaurant and Bar to celebrate Judge Porteous's fifth year on the Federal bench. (Exs. 24 and 46, and Task Force Hearing I).

84. At some time while the Liljeberg case was pending before Judge Porteous, Jacob Amato, Jr., Leonard Levenson, and Donald Gardner each gave money either to Judge Porteous directly, or to his secretary Rhonda Danos, to help pay for a Washington D.C. externship for one of Judge Porteous's sons. (Exs. 24, 25, 32, 33, 46 and Task Force Hearing I).

85. During the 1996–2000 time-frame, Judge Porteous maintained a close relationship with Leonard Levenson, demonstrated by Judge Porteous and Leonard Levenson traveling together on several occasions.

86. During the 1996–1998 time-frame, Judge Porteous attended at least one hunting trip with Leonard Levenson, at a Mississippi property owned by Allen Usry, an attorney who on occasion worked with Levenson. (Exs. 30, 163).

87. In April 1999, Leonard Levenson attended the Fifth Circuit Judicial Conference in Houston, Texas as an invitee of Judge Porteous.

88. While at the Fifth Circuit Judicial Conference in April 1999, Leonard Levenson paid for meals and drinks for Judge Porteous. (Exs. 26, 31, 291).

89. In October 1999, Leonard Levenson paid for a dinner with Judge Porteous in Las Vegas, Nevada. (Exs. 30, 31, 291, and 299).

90. In December 1999, Judge Porteous went on a multi-day hunting trip to the Blackhawk hunting facility in Louisiana with Leonard Levenson. (Exs. 31, 163, 286).

91. Judge Porteous did not notify Joseph Mole, counsel for Lifemark, of any of his post-recusal hearing and post trial contacts with Jacob Amato, Jr., Robert Creely, or Leonard Levenson.

92. On April 26, 2000, nearly three years after the trial concluded, Judge Porteous issued a written opinion in Lifemark Hospitals of La., Inc. v. Liljeberg Enterprises, Inc. (Ex. 62).

93. Judge Porteous ruled in favor of Jacob Amato, Jr.'s and Leonard Levenson's client, the Liljebergs.

94. Lifemark appealed Judge Porteous's decision to the Fifth Circuit Court of Appeals.

95. In August 2002, the Fifth Circuit Court of Appeals reversed Judge Porteous's decision. (Ex. 63).

IX. Article II—The Marcottes

96. On numerous occasions when he was a State court judge, Judge Porteous set bonds, reduced bonds, and split bonds in response to requests by Louis Marcotte, Lori Marcotte, or a representative of the Marcottes. (Exs. 350, 351).

97. In or about the summer of 1993, Jeffery Duhon worked for Louis Marcotte's bail bonds business.

98. On or about July 15, 1993, Judge Porteous set aside Jeffery Duhon's burglary conviction. (Exs. 77(a), 77(b)).

99. In September 1994 and October 1994, Aubrey Wallace worked for Louis Marcotte's bail bonds business.

100. On or about September 20, 1994, Judge Porteous held a hearing at which he ordered that Aubrey Wallace's court records in State of Louisiana v. Aubrey N. Wallace, No. 89-2360 (24th Jud. Dist Ct., Jeff. Par., La.) be amended to include removal of the unsatisfactory completion of probation and the entering of the guilty plea under Code of Criminal Procedure 893. (Ex. 69(d)).

101. On or about September 22, 1994, Judge Porteous signed a written Order that stated: "IT IS ORDERED that the sentence on Aubrey WALLACE is hereby amended to include the following wording, 'the defendant plead under Article 893.'" (Ex. 82).

102. In the last few weeks of Judge Porteous's tenure as a State court judge, he set, reduced and split numerous bonds at the request of the Marcottes. (Exs. 350, 351).

103. On October 14, 1994, Judge Porteous entered an order setting aside Aubrey Wallace's burglary conviction in State of Louisiana v. Aubrey N. Wallace, No. 89-2360 (24th Jud. Dist Ct., Jeff. Par., La.).

104. In or about July 19, 1999, Judge Porteous attended a Professional Bail Agents of the United States (PBUS) convention at the Beau Rivage Resort in Biloxi Mississippi, at which convention he attended a cocktail party hosted by the Marcottes. (Exs. 223, 224).

105. On or about March 11, 2002, Judge Porteous was a guest of the Marcottes at the conclusion of a lunch at Emeril's Restaurant, in New Orleans, Louisiana at which newly elected State judge Joan Benge and State judge Ronald Bodenheimer were also in attendance. (Ex. 375).

X. Article III—Bankruptcy

106. On his Financial Disclosure Form for reporting period 1996, Judge Porteous checked the box for "None (No reportable liabilities)." (Ex. 102(a)).

107. Judge Porteous's balance due on his Citibank credit card account ending in 0426 for the period ending on December 12, 1996 was $14,846.47. (Ex. 167).

108. Judge Porteous signed his Financial Disclosure Form for reporting period 1996 on May 12, 1997. Judge Porteous's signature appeared below a Certification that stated, in part:

> "I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure." (Ex. 102(a)).

109. On his Financial Disclosure Form for reporting period 1997, Judge Porteous checked the box for "None (No reportable liabilities)." (Ex. 103(a)).

110. Judge Porteous's balance due on his MBNA MasterCard account ending in 0877 for the period ending on December 19, 1997 was $15,569.25. (Ex. 168).

111. Judge Porteous's balance due on his MBNA MasterCard account ending in 1290 for the period ending on December 4, 1997 was $18,146.85. (Ex. 168).

112. Judge Porteous's balance due on his Travelers credit card account ending in 0642 for the period ending on December 30, 1997 was $9,378.76. (Ex. 168).

113. Judge Porteous signed his Financial Disclosure Form for reporting period 1997 on May 13, 1998. Judge Porteous's signature appeared below a Certification that stated, in part:

> "I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure." (Ex. 103(a)).

114. On his Financial Disclosure Form for reporting period 1998, in Section VI, "Liabilities," Judge Porteous listed MBNA and Citibank as creditors, each with a value listed as code "J," which indicated liabilities on each card of $15,000 or less. (Ex. 104(a)).

115. Judge Porteous's balance due on his MBNA MasterCard account ending in 0877 for the period ending December 19, 1998 was $16,550.08. (Ex. 169).

116. Judge Porteous's balance due on his MBNA MasterCard account ending in 1290 for the period ending December 4, 1998 was $17,155.76. (Ex. 169).

117. Judge Porteous signed his Financial Disclosure Form for reporting period 1998 on May 13, 1999. Judge Porteous's signature appeared below a Certification that stated, in part:

> "I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure." (Ex. 104(a)).

118. On his Financial Disclosure Form for reporting period 1999, in Section VI, "Liabilities," Judge Porteous listed MBNA and Citibank as creditors, each with a value listed as code "J," which indicated liabilities on each card of $15,000 or less. (Ex. 105(a)).

119. Judge Porteous's balance due on his MBNA MasterCard account ending in 0877 for the period ending on December 18, 1999 was $24,953.65. (Ex. 170).

120. Judge Porteous's balance due on his MBNA MasterCard account ending in 1290 for the period ending on December 4, 1999 was $25,755.84. (Ex. 170).

121. Judge Porteous's balance due on his Citibank credit card account ending in 0426 for the period ending on December 10, 1999 was $22,412.15. (Ex. 170).

122. Judge Porteous's balance due on his Citibank credit card account ending in 9138 for the period ending on December 21, 1999 was $20,051.95. (Ex. 170).

123. Judge Porteous's balance due on his Travelers credit card account ending in 0642 for the period ending on December 29, 1999 was $15,467.29. (Ex. 170).

124. Judge Porteous signed his Financial Disclosure Form for reporting period 1999 on May 5, 2000. Judge Porteous's signature appeared below a Certification that stated, in part:

> "I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure." (Ex. 105(a)).

125. On his Financial Disclosure Form for reporting period 2000, in Section VI, "Liabilities," Judge Porteous listed MBNA and Citibank as creditors, each with a value listed as code "J," which indicated liabilities on each card of $15,000 or less. (Ex. 106(a)).

126. Judge Porteous's balance due on his MBNA MasterCard account ending in 0877 for the period ending on December 20, 2000 was $28,347.44. (Ex. 171).

127. Judge Porteous's balance due on his MBNA MasterCard account ending in 1290 for the period ending on December 5, 2000 was $29,258.68. (Ex. 171).

128. Judge Porteous's balance due on his Citibank credit card account ending in 0426 for the period ending on December 12, 2000 was $24,565.76. (Ex. 171).

129. Judge Porteous's balance due on his Citibank credit card account ending in 9138 for the period ending on December 21, 2000 was $21,227.06. (Ex. 171).

130. Judge Porteous's balance due on his Travelers credit card account ending in 0642 for the period ending on December 29, 2000 was $17,682.35. (Ex. 171).

131. Judge Porteous signed his Financial Disclosure Form for reporting period 2000 on May 10, 2001. Judge Porteous's signature appeared below a Certification that stated, in part:

> "I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure." (Ex. 106(a)).

132. Judge Porteous opened a $2,000 line of credit at the Grand Casino Gulfport in Gulfport, Mississippi on July 22, 1994. (Ex. 326).

133. Judge Porteous opened a $2,000 line of credit at the Grand Casino Biloxi in Biloxi, Mississippi on August 19, 1995. (Ex. 326).

134. Judge Porteous opened a $2,500 line of credit at the Casino Magic Bay in St. Louis, Mississippi on October 26, 1995. (Ex. 326).

135. Judge Porteous opened a $2,000 line of credit at the Treasure Chest Casino in Kenner, Louisiana on November 25, 1997. (Ex. 326).

136. Judge Porteous opened a $2,000 line of credit at the Isle of Capri Casino in Biloxi, Mississippi on March 31, 1998. (Ex. 326).

137. Judge Porteous opened a $2,500 line of credit at the Beau Rivage Casino in Biloxi, Mississippi on April 14, 1999. (Ex. 326).

138. Judge Porteous opened a $5,000 line of credit at Caesars Palace Casino in Las Vegas, Nevada on May 12, 1999. (Ex. 326).

139. Judge Porteous's credit limit at the Treasure Chest Casino in Kenner, Louisiana was increased to $3,000 on August 17, 2000. (Ex. 326).

140. Judge Porteous opened a $5,000 line of credit at Caesars Tahoe Casino in Lake Tahoe, Nevada on December 11, 2000. (Ex. 326).

141. Judge Porteous opened a $4,000 line of credit at Harrah's Casino in New Orleans, Louisiana on April 30, 2001. (Ex. 326).

142. On March 2, 2001, Judge Porteous's credit limit at the Treasure Chest Casino in Kenner, Louisiana was increased from $3,000 to $4,000. (Ex. 331).

143. On March 2, 2001, Judge Porteous gambled at the Treasure Chest Casino in Kenner, Louisiana. (Ex. 302).

144. On March 2, 2001, Judge Porteous took out seven $500 markers at the Treasure Chest Casino in Kenner, Louisiana, identified by marker numbers 00058997, 00059000, 00059002, 00059011, 00059012, 00059013, and 00059019. On March 3, 2001, Judge Porteous repaid marker numbers 00058997, 00059000, 00059002, and 00059019 with chips. (Ex. 302).

145. Judge Porteous left the Treasure Chest Casino in Kenner, Louisiana on March 3, 2001 owing the casino $1,500. (Ex. 302).

146. On March 27, 2001, Judge Porteous repaid marker numbers 00059011, 00059012, and 00059013 to the Treasure Chest Casino in Kenner, Louisiana with cash. (Ex. 302).

147. On February 27, 2001, Judge Porteous gambled at the Grand Casino Gulfport in Gulfport, Mississippi. (Ex. 301(a)).

148. On February 27, 2001, Judge Porteous took out two $1,000 markers at the Grand Casino Gulfport in Gulfport, Mississippi, identified by marker numbers MK131402 and MK131405. (Ex. 301(a)).

149. On March 27, 2001, Judge Porteous deposited $2,000 into his Bank One checking account. This deposit consisted of $1,960 in cash and a $40 check drawn on Judge Porteous's Fidelity money market account. (Exs. 143, 144, 301(b)).

150. On or about April 5, 2001, the Grand Casino Gulfport collected $1,000 from Judge Porteous after marker number MK131402 was deposited into and cleared Judge Porteous's Bank One checking account. (Ex. 301(b)).

151. On or about April 6, 2001, the Grand Casino Gulfport collected $1,000 from Judge Porteous after marker number MK131405 was deposited into and cleared Judge Porteous's Bank One checking account. (Ex. 301(b)).

152. On March 20, 2001, Judge Porteous opened a Post Office Box at a Post Office in Harvey, Louisiana. (Ex. 145).

153. On March 23, 2001, Judge Porteous signed his tax return for calendar year 2000, which claimed a tax refund in the amount of $4,143.72. (Ex. 141).

154. On April 13, 2001, Judge Porteous's $4,143.72 tax refund was electronically deposited by the U.S. Treasury directly into Judge Porteous's Bank One checking account. (Ex. 144).

155. Judge Porteous signed his initial Voluntary Petition for Chapter 13 Bankruptcy on March 28, 2001. (Ex. 125).

156. Judge Porteous's signature on his initial Voluntary Petition for Chapter 13 Bankruptcy appears directly below the following declaration:

> I declare under penalty of perjury that the information provided in this petition is true and correct. (Ex. 125).

157. Judge Porteous's initial Voluntary Petition for Chapter 13 Bankruptcy was filed in the United States Bankruptcy Court for the Eastern District of Louisiana on March 28, 2001. (Ex. 125).

158. Judge Porteous's initial Voluntary Petition for Chapter 13 Bankruptcy listed the Name of Debtor as "Ortous, G.T." (Ex. 125).

159. At the Fifth Circuit Hearing, Judge Porteous testified under oath as follows regarding the name "Ortous" on his initial Voluntary Petition for Chapter 13 Bankruptcy:

> Q: Your name is not Ortous, is it?
>
> A: No, sir.
>
> Q: Your wife's name is not Ortous?
>
> A: No, sir.
>
> Q: So, those statements that were signed—so, this petition that was signed under penalty of perjury had false information, correct?
>
> A: Yes, sir, it appears to. (Porteous 5th Cir. Hrg. at 55 (Ex. 10)).

160. Judge Porteous's initial Voluntary Petition for Chapter 13 Bankruptcy listed a Street Address of "P.O. Box 1723, Harvey, LA 70059-1723." (Ex. 125).

161. Judge Porteous's street address on March 28, 2001 was 4801 Neyrey Drive, Metairie, LA 70002.

162. Judge Porteous signed his amended Voluntary Petition for Chapter 13 Bankruptcy on April 9, 2001. (Ex. 126).

163. Judge Porteous's amended Voluntary Petition for Chapter 13 Bankruptcy was filed in the United States Bankruptcy Court for the Eastern District of Louisiana on April 9, 2001. (Ex. 126).

164. Judge Porteous's amended Voluntary Petition for Chapter 13 Bankruptcy listed the Name of Debtor as "Porteous, Jr., Gabriel T." (Ex. 126).

165. Judge Porteous's amended Voluntary Petition for Chapter 13 Bankruptcy listed a Street Address of 4801 Neyrey Drive, Metairie, LA 70002. (Ex. 126).

166. Judge Porteous signed his Bankruptcy Schedules on April 9, 2001. (Ex. 127 at SC00111).

167. Judge Porteous's signature on his Bankruptcy Schedules appears directly below the following declaration:

> I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 16 sheets, plus the summary page, and that they are true and correct to the best of my knowledge, information, and belief. (Ex. 127 at SC00111).

168. Judge Porteous's Bankruptcy Schedules were filed with the United States Bankruptcy Court for the Eastern District of Louisiana on April 9, 2001. (Ex. 127).

169. Category 17 on Judge Porteous's Bankruptcy Schedule B ("Personal Property") required Judge Porteous to disclose "other liquidated debts owing debtor including tax refunds," in response to which the box "none" was marked with an "X." (Ex. 127 at SC00096).

170. Category 2 on Judge Porteous's Bankruptcy Schedule B required Judge Porteous to disclose "Checking, savings or other financial accounts . . . ." and to state the current market value of ins interest in that property, in response to which the Schedule lists only Judge Porteous's Bank One checking account with a current market value of $100." (Ex. 127 at SC00095).

171. At the Fifth Circuit Hearing, Judge Porteous testified under oath as follows regarding his response to Category 2 on Schedule B:

> Q: Okay. Let's go through this for a moment. Under Schedule B, "Personal Property."
>
> A: All right.
>
> Q: "Type of property, checking, savings, or other financial accounts, certificates of deposit, shares in banks, savings and loan,

thrift, building and loan, homestead association, or credit unions, brokerage houses or cooperatives." Did I read that accurately?

A: Yes, sir.

Q: And you listed Bank One Checking Account [account number redacted]. Is that correct?

A: That's correct.

Q: And the current value of that interest is $100, correct?

A: Yes, sir. (Porteous 5th Cir. Hrg. at 79–80 (Ex. 10)).

172. The opening balance of Judge Porteous's Bank One checking account for the time period of March 23, 2001 to April 23, 2001 was $559.07. (Ex. 144).

173. The closing balance of Judge Porteous's Bank One checking account for the time period of March 23, 2001 to April 23, 2001 was $5,493.91. (Ex. 144).

174. Judge Porteous deposited $2,000 into his Bank One checking account on March 27, 2001. (Ex. 144).

175. At no time between March 23, 2001 to April 23, 2001 did the balance in Judge Porteous's Bank One checking account drop to $100 or less. (Ex. 144).

176. On March 28, 2001, Judge Porteous had a Fidelity money market account. This account was held in both his and his wife Carmella's names. (Ex. 143).

177. Judge Porteous's Fidelity money market account was not disclosed in response to Category 2 on Judge Porteous's Bankruptcy Schedule B. (Ex. 127 at SC00095).

178. The opening balance on Judge Porteous's Fidelity money market account for the time period of March 31, 2001 to April 20, 2001 was $623.94. (Ex. 143).

179. The balance on Judge Porteous's Fidelity money market account on March 28, 2001 was $283.42. (Ex. 143).

180. On April 4, 2001, a $200.00 deposit was made into Judge Porteous's Fidelity money market account. (Ex. 143).

181. Judge Porteous wrote four checks from his Fidelity money market account between March 22, 2001 to April 12, 2001. (Ex. 143).

182. On more than one occasion, Judge Porteous withdrew money from his Fidelity IRA account and deposited that money into his Fidelity money market account. The total dollar amount that Judge Porteous transferred from his Fidelity IRA to his Fidelity money market account between 1997 and 2000 was in excess of $10,000. (Ex. 383).

183. On March 28, 2001, Judge Porteous owed $2,000 in markers to the Grand Casino Gulfport in Gulfport, Mississippi arising from the two $1,000 markers he took out on February 27, 2001. (Ex. 301(a)–(b)).

184. Judge Porteous's Bankruptcy Schedule F ("Creditors Holding Unsecured Nonpriority Claims") required Judge Porteous to "list creditors holding unsecured, nonpriority claims, as of the date of the filing of the petition," in response to which Judge Porteous's debt to the Grand Casino Gulfport was not listed. (Ex. 127 at SC00102–105; Ex. 345).

185. Judge Porteous's Bankruptcy Schedule I ("Current Income of Individual Debtor(s)") required Judge Porteous to disclose "Current monthly wages, salary, and commissions (pro rate if not paid monthly)," in response to which the Schedule listed Judge Porteous's current monthly gross income as $7,531.52 (Ex. 127 at SC00108).

186. Judge Porteous's Bankruptcy Schedule I listed his "total net monthly take home pay" as $7,531.52. (Ex. 127 at SC00108).

187. Attached to Judge Porteous's Bankruptcy Schedule I was Judge Porteous's Employee Earnings Statement issued by the Administrative Office of the United States Court, for the monthly pay period ending on May 31, 2000, which stated that Judge Porteous's gross earnings were $11,775.00, and his net pay was $7,531.52. (Ex. 127 at SC00109).

188. In the summer of 2000, Judge Porteous had provided his Employee Earnings Statement for the monthly pay period ending on May 31, 2000 to Claude Lightfoot.

189. Judge Porteous never provided Claude Lightfoot with an Employee Earnings Statement that was more recent than Judge Porteous's statement for the pay period ending on May 31, 2000.

190. In March and April 2001, Judge Porteous's monthly net pay was $7,705.51. (Ex. 144).

191. Judge Porteous signed his Statement of Financial Affairs on April 9, 2001. (Ex. 127 at SC00112).

192. Judge Porteous's signature on his Statement of Financial Affairs appears directly below the following declaration:

> I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct. (Ex. 127 at SC00116).

193. Judge Porteous's Statement of Financial Affairs was filed with the United States Bankruptcy Court for the Eastern District of Louisiana on April 9, 2001. (Ex. 127).

194. Question 3 on Judge Porteous's Statement of Financial Affairs required Judge Porteous to list "all payments on loans, installment purchases of goods or services, and other debts, aggregating more than $600 to any creditor, made within 90 days immediately preceding

the commencement of this case," in response to which the answer given was "Normal Installments." (Ex. 127 at SC00112).

195. On March 27, 2001, Judge Porteous made a $1,500 cash payment to the Treasure Chest Casino in Kenner, Louisiana to repay markers owed to the casino. (Ex. 302).

196. At the Fifth Circuit Hearing, Judge Porteous testified under oath as follows regarding his understanding of a marker:

> Q: Judge Porteous, you're familiar with the term "marker," aren't you?
>
> A: Yes, sir.
>
> Q: Would it be fair to state that, "A marker is a form of credit extended by a gambling establishment, such as a casino, that enables the customer to borrow money from the casino. The marker acts as the customer's check or draft to be drawn upon the customer's account at a financial institution. Should the customer not repay his or her debt to the casino, the marker authorizes the casino to present it to the financial institution or bank for negotiation and draw upon the customer's bank account any unpaid balance after a fixed period of time." Is that accurate?
>
> A: I believe that's correct and probably was contained in the complaint or – or the second complaint. There's a definition contained.
>
> Q: And you have no quarrel with the definition?
>
> A: No, sir. (Porteous 5th Cir. Hrg. at 64–65 (Ex. 10)).

197. Judge Porteous's answer to Question 3 on his Statement of Financial Affairs did not list the $1,500 cash payment that Judge Porteous made to the Treasure Chest Casino in Kenner, Louisiana on March 27, 2001. (Ex. 127 at SC00112; Ex. 302).

198. Question 8 on Judge Porteous's Statement of Financial Affairs required Judge Porteous to list "all losses from fire, theft, other casualty or gambling within one year immediately preceding the commencement of this case or since the commencement of this case," in response to which the box "None" was checked. (Ex. 127 at SC00113).

199. Between March 28, 2000 and March 28, 2001, Judge Porteous accrued gambling losses. (Porteous 5th Cir. Hrg. at 98–99 (Ex. 10)).

200. At the Fifth Circuit Hearing, Judge Porteous testified under oath as follows regarding his response to Question 8 on his Statement of Financial Affairs:

Q: [Item 8] asks you to list all losses for fire, theft, other casualty, gambling within one year immediately preceding the commencement of this case – meaning your case – or since the commencement of this case. And I believe we read this before, about married debtors filing under Chapter 12 and Chapter 13. And you list "none," correct?

A: That's what's listed, correct.

Q: Judge Porteous, do you recall that in the – that your gambling losses exceeded $12,700 during the preceding year?

A: I was not aware of it at the time, but now I see your documentation and that – and that's what it reflects.

Q: So, you – you don't dispute that?

A: I don't dispute that.

Q: Therefore, the answer "no" was incorrect, correct?

A: Apparently, yes.

Q: Even though this was signed under oath, under penalty of perjury, correct?

A: Right. (Porteous 5th Cir. Hrg. at 98–99 (Ex. 10)).

201. On April 6, 2001, Judge Porteous requested a one-time credit increase at the Beau Rivage Casino in Biloxi, Mississippi from $2,500 to $4,000. (Ex. 303).

202. On April 7–8, 2001, Judge Porteous gambled at the Beau Rivage Casino in Biloxi, Mississippi. (Ex. 304).

203. On April 7, 2001, Judge Porteous took out two $500 markers at the Beau Rivage Casino in Biloxi, Mississippi, identified by marker numbers 127556 and 127558. (Ex. 304).

204. On April 8, 2001, Judge Porteous took out two $500 markers at the Beau Rivage Casino in Biloxi, Mississippi, identified by marker numbers 127646 and 127658. Judge Porteous also made two $500 payments to the casino on April 8, 2001, identified by transaction numbers 4069177 and 4069190. (Ex. 304).

205. When Judge Porteous left the Beau Rivage Casino in Biloxi, Mississippi on April 8, 2001, he owed $1,000 to the casino. (Ex. 304).

206. On April 24, 2001, Judge Porteous withdrew $1,000 from his Fidelity Individual Retirement Account, which was paid to him in the form of a check issued by National Financial Services LLC. (Ex. 382).

207. Judge Porteous endorsed the $1,000 check from National Financial Services LLC and signed the check over to Rhonda Danos. (Ex. 382).

208. On April 30, 2001, Rhonda Danos wrote a $1,000 check from her personal checking account, identified by check number 1699, to the Beau Rivage Casino. The check's memo line referenced "Gabriel Thomas Porteous Jr., Acct. # [redacted]." (Ex. 382).

209. On May 2, 2001, Rhonda Danos deposited into her personal checking account the $1,000 check from National Financial Services LLC, which had been issued to Judge Porteous and signed over to her. (Ex. 382).

210. On May 4, 2001, Rhonda Danos's $1,000 check to the Beau Rivage Casino, written on Judge Porteous's behalf, was paid at the cage and was credited against Judge Porteous's Beau Rivage account, identified by transaction number 4071922. The Beau Rivage Casino deposited Ms. Danos's $1,000 check on May 5, 2001. (Ex. 304).

211. On May 8, 2001, 19, 2001, Rhonda Danos's $1,000 check to the Beau Rivage Casino, identified by check number 1699, cleared Danos's bank account. (Ex. 382).

212. On April 10, 2001, Judge Porteous gambled at the Treasure Chest Casino in Kenner, Louisiana. (Ex. 305).

213. On April 10, 2001, Judge Porteous took out four $500 markers at the Treasure Chest Casino in Kenner, Louisiana, identified by marker numbers 00060317, 00060319, 00060320, and 00060321. Judge Porteous repaid all four markers the same day with chips. (Ex. 305).

214. On May 7, 2001, Judge Porteous gambled at the Treasure Chest Casino in Kenner, Louisiana. (Ex. 307).

215. On May 7, 2001, Judge Porteous took out four $1,000 markers at the Treasure Chest Casino in Kenner, Louisiana, identified by marker numbers 00061209, 00061212, 00061216, and 00061230. (Ex. 307.)

216. When Judge Porteous left the Treasure Chest Casino in Kenner, Louisiana on May 7, 2001, he owed $4,000 to the casino. (Ex. 307).

217. On May 9, 2001, Judge Porteous made a $4,000 cash payment to the Treasure Chest Casino, repaying marker numbers 00061209, 00061212, 00061216, and 00061230. (Ex. 307).

218. On April 30, 2001, Judge Porteous submitted a Casino Credit Application to Harrah's Casino in New Orleans, Louisiana, requesting a $4,000 credit limit. (Ex. 149).

219. On April 30, 2001, Judge Porteous gambled at Harrah's Casino in New Orleans, Louisiana. (Ex. 306).

220. On April 30, 2001, Judge Porteous took out two $500 markers at Harrah's Casino in New Orleans, Louisiana, identified by marker numbers 0084898 and 0084899. Judge Porteous wrote a $1,000 check to Harrah's Casino the same day to repay both markers. Judge Porteous's check cleared Harrah's Casino on May 30, 2001. (Ex. 306).

221. On May 9, 2001, a Section 341 Creditors Meeting was held in Judge Porteous's Chapter 13 Bankruptcy case. (Ex. 129).

222. Judge Porteous attended the Section 341 Creditors Meeting held on May 9, 2001 with his bankruptcy counsel Claude Lightfoot. (Ex. 130).

223. The Section 341 Creditors Meeting was recorded, and the transcription of that recording is true and accurate. (Ex. 130).

224. At the Section 341 Creditors Meeting on May 9, 2001, bankruptcy trustee S.J. Beaulieu, Jr. gave Judge Porteous a copy of a pamphlet entitled "Your Rights and Responsibilities in Chapter 13." (Ex. 130). Section 6 of the "Rights and Responsibilities" pamphlet, which Judge Porteous received from Bankruptcy Trustee Beaulieu, stated as follows:

> You may not borrow money or buy anything on credit while in Chapter 13 without permission from the bankruptcy Court. This includes the use of credit cards or charge accounts of any kind. If you or a family member you support buys something on credit without Court approval, the Court could order the goods returned. (Ex. 148 at SC00402).

225. At the Section 341 Creditors Meeting on May 9, 2001, Judge Porteous was placed under oath and stated "yes" when asked if everything in his bankruptcy petition was true and correct. (Ex. 130).

226. At the Section 341 Creditors Meeting on May 9, 2001, while under oath, Judge Porteous stated "yes" when asked if he had listed all of his assets in his bankruptcy petition. (Ex. 130 at SC00596).

227. At the Section 341 Creditors Meeting on May 9, 2001, while under oath, Judge Porteous answered in the affirmative when asked if his take home pay was about $7,500 a month. (Ex. 130 at SC00596).

228. At the Section 341 Creditors Meeting on May 9, 2001, Bankruptcy Trustee S.J. Beaulieu, Jr. told Judge Porteous that "Any charge cards that you may have you have [sic] you cannot use any longer. So basically you on a cash basis now." (Ex. 130 at SC00598).

229. At the Fifth Circuit Hearing, Judge Porteous testified under oath as follows regarding the Section 341 Creditors Meeting:

> Q: Now, after bankruptcy, you had a meeting with the trustee, SJ Beaulieu, correct?

A: After what?

Q: After bankruptcy was filed.

A: After it was filed, that's correct.

Q: And you recall that Mr. Beaulieu handed you a pamphlet called "Your Rights and Responsibilities in Chapter 13," which we have marked as the Committee's Exhibit 11?

A: I believe that's – yeah, right.

Q: And it bears the name of Mr. Beaulieu and has his local New Orleans phone number?

A: Yes, sir.

* * *

Q: Calling your attention to this exhibit, there are enumerated paragraphs. Paragraph 6, follow me while I read. "Credit While in Chapter 13. You may not borrow money or buy anything on credit while in Chapter 13 without permission from the bankruptcy court. This includes the use of credit cards or charge accounts of any kind."

Did I read that accurately, sir?

A: You did.

Q: And do you recall reading that and discussing that with Mr. Beaulieu?

A: I don't specifically recall it, but I'm not saying it didn't happen.

Q: All right. Do you recall, on or about May 9th, 2001, having a – what's called a 341 bankruptcy hearing, where Mr. Beaulieu as trustee was present; your attorney, Mr. Lightfoot, was present; and you were present?

A: Yes, sir, I remember meeting with Mr. Beaulieu.

Q: And that meeting was recorded, if you – do you recall that?

A: I believe that's correct, yeah, tape recorded.

Q: Right.

Do you recall Mr. Beaulieu stating the following? "Any charge cards that you may – you have you cannot use any longer. So, basically, you're on a cash basis now. I have no further questions except have you made your first payments."

Did I read that accurately?

A: Yes, sir.

Q: So, you were told by Mr. Beaulieu that you couldn't incur any more credit there, on credit cards, correct?

A: I'm not sure it was there, but I'm sure it was part of the explanation at some point.

Q: Well, going back to –

A: When you ask – I only meant in reference to the statement. Yes, it's –

Q: Right.

A: – contained in there, and I knew that.

Q: And it was your understanding – and that's what I'm trying to find out, sir – that you couldn't incur more credit while in bankruptcy, correct?

A: That's correct. (Porteous 5th Cir. Hrg. at 61–62 (Ex. 10)).

230. On May 16, 2001, Judge Porteous gambled at the Treasure Chest Casino in Kenner, Louisiana. (Ex. 308).

231. On May 16, 2001, Judge Porteous took out a $500 marker at the Treasure Chest Casino in Kenner, Louisiana, identified by marker number 00061520. Judge Porteous repaid that marker the same day with chips. (Ex. 308).

232. On June 20, 2001, Judge Porteous gambled at the Treasure Chest Casino in Kenner, Louisiana. (Ex. 310).

233. On June 20, 2001, Judge Porteous took out a $500 marker at the Treasure Chest Casino in Kenner, Louisiana, identified by marker number 00062678. Judge Porteous repaid that marker the same day with chips. (Ex. 310).

234. On May 26–27, 2001, Judge Porteous gambled at the Grand Casino Gulfport in Gulfport, Mississippi. (Ex. 309).

235. On May 26, 2001, Judge Porteous took out a $500 marker at the Grand Casino Gulfport in Gulfport, Mississippi, identified by marker number MK141028. (Ex. 309).

236. On May 27, 2001, Judge Porteous took out a $500 marker at the Grand Casino Gulfport in Gulfport, Mississippi, identified by marker number MK141325. Judge Porteous repaid $900 to the casino that same day. (Ex. 309).

237. On May 28, 2001, Judge Porteous wrote a $100 check to the Grand Casino Gulfport, which cleared his Bank One checking account on May 30, 2001. After that check cleared, Judge Porteous's balance due and owing to the Grand Casino Gulfport was $0. (Ex. 309).

238. On June 28, 2001, U.S. Bankruptcy Judge William Greendyke signed an "Order Confirming the Debtor's Plan and Related Orders" in Judge Porteous's bankruptcy case. Judge Porteous received a copy of this order. (Ex. 133).

239. Paragraph 4 of the June 28, 2001 Order signed by Judge Greendyke stated as follows:

> The debtor(s) shall not incur additional debt during the term of this Plan except upon written approval of the Trustee. Failure to obtain such approval may cause the claim for such debt to be unallowable and non-dischargeable. (Ex. 133).

240. At the Fifth Circuit Hearing, Judge Porteous testified under oath as follows regarding the June 28, 2001 Order signed by Judge Greendyke:

> Q: Okay. Now, on June 2nd [sic], are you familiar with the order signed by Bankruptcy Judge Greendyke?
>
> And this is from Exhibit 1, Bates Number SC50, Exhibit 1 being the certified copy of the bankruptcy file.
>
> "It is ordered that," going down to Number 4, "the debtors shall not incur additional debt during the term of this plan except upon written approval of the trustee."
>
> Did I read that correctly?
>
> A: You did.
>
> Q: Was that your understanding at the time?
>
> A: In the order, it was.
>
> Judge Lake: What's the date of that document?
>
> Mr. Finder: July 2nd, 2001, was the docket date. It was signed by Judge Greendyke on June 28th, 2001. (Porteous 5th Cir. Hrg. at 62 (Ex. 10)).

241. Judge Porteous was subject to the terms of the June 28, 2001 Order until his Chapter 13 bankruptcy was discharged on July 22, 2004. (Ex. 137).

242. In December 2002, Judge Porteous asked his bankruptcy attorney, Claude Lightfoot, to seek permission from the bankruptcy trustee for Judge Porteous to refinance his home.

243. On December 20, 2002, Judge Porteous was granted permission to refinance his home by Chapter 13 Trustee S.J. Beaulieu, Jr. (Ex. 339).

244. In December 2002 or January 2003, Judge Porteous asked his bankruptcy attorney, Claude Lightfoot, to seek permission from the bankruptcy trustee for Judge Porteous and his wife Carmella to enter into new car lease agreements.

245. On January 3, 2003, Judge Porteous was granted permission to enter into two new car lease agreements by Chapter 13 Trustee S.J. Beaulieu, Jr. (Ex. 340).

246. On July 19, 2001, Judge Porteous gambled at the Treasure Chest Casino in Kenner, Louisiana. (Ex. 311).

247. On July 19, 2001, Judge Porteous took out a $500 marker at the Treasure Chest Casino in Kenner, Louisiana, identified by marker number 00063615. Judge Porteous repaid that marker the same day in chips. (Ex. 311).

248. On July 23, 2001, Judge Porteous gambled at the Treasure Chest Casino in Kenner, Louisiana. (Ex. 312).

249. On July 23, 2001, Judge Porteous took out a $500 marker at the Treasure Chest Casino in Kenner, Louisiana, identified by marker number 00063744. Judge Porteous repaid that marker the same day in chips. (Ex. 312).

250. On August 20–21, 2001, Judge Porteous gambled at the Treasure Chest Casino in Kenner, Louisiana. (Ex. 313(a)).

251. On August 20, 2001, Judge Porteous took out three $1,000 markers at the Treasure Chest Casino in Kenner, Louisiana, identified by marker numbers 00064677, 00064680, and 00064685. Judge Porteous repaid all three markers the same day with chips. (Ex. 313(a)).

252. On August 21, 2001, Judge Porteous took out five $1,000 markers at the Treasure Chest Casino in Kenner, Louisiana, identified by marker numbers 00064729, 00064730, 00064739, 00064744, and 00064746. Judge Porteous repaid marker numbers 00064729 and 00064744 the same day with chips. (Ex. 313(a)).

253. When Judge Porteous left the Treasure Chest Casino in Kenner, Louisiana on August 21, 2001, he owed $3,000 to the casino. (Ex. 309).

254. On September 9, 2001, Judge Porteous repaid marker number 00064739, in the amount of $1,000, to the Treasure Chest Casino in Kenner, Louisiana with cash, leaving a balance of $2,000 owed to the casino. (Ex. 313(a)).

255. On September 15, 2001, Judge Porteous paid $2,000 in cash to the Treasure Chest Casino in Kenner, Louisiana, repaying marker numbers 00064730 and 00064746. (Ex. 313(a)).

256. On October 13, 2001, Judge Porteous gambled at the Treasure Chest Casino in Kenner, Louisiana. (Ex. 315).

257. On October 13, 2001, Judge Porteous took out two $500 markers at the Treasure Chest Casino in Kenner, Louisiana, identified by marker numbers 00066463 and 00066465. Judge Porteous repaid both markers the same day with chips. (Ex. 315).

258. On October 17–18, 2001, Judge Porteous gambled at the Treasure Chest Casino in Kenner, Louisiana. (Ex. 316).

259. On October 17, 2001, Judge Porteous took out three $1,000 markers at the Treasure Chest Casino in Kenner, Louisiana, identified by marker numbers 00066625, 00066627, and 00066644, and he also took out five $500 markers, identified by marker numbers 00066630, 00066632, 00066633, 00066640, and 00066645. Judge Porteous repaid marker numbers 00066630, 00066632, and 00066633 the same day with chips. (Ex. 316).

260. On October 18, 2001, Judge Porteous took out a $400 marker at the Treasure Chest Casino in Kenner, Louisiana, identified by marker number M2B459. (Ex. 316).

261. When Judge Porteous left the Treasure Chest Casino in Kenner, Louisiana on October 18, 2001, he owed $4,400 to the casino. (Ex. 309)

262. On October 25, 2001, Judge Porteous withdrew $1,760 from his Individual Retirement Account, which was paid to him in the form of a check issued by National Financial Services LLC. (Ex. 381).

263. On October 30, 2001, Judge Porteous deposited the $1,760 check from his Individual Retirement Account, issued by National Financial Services LLC, into his Fidelity money market account. (Ex. 381).

264. On November 9, 2001, Judge Porteous wrote a check for $1,800 from his Fidelity money market account, identified by check number 589, to the Treasure Chest Casino, repaying marker number 00066625 in its entirety and repaying $800 of marker number 00066627. Judge Porteous repaid the remaining $200 of marker number 00066627 with cash that same day. (Exs. 316, 381).

265. On November 9, 2001, Judge Porteous paid $2,400 in cash to the Treasure Chest Casino in Kenner, Louisiana, repaying marker numbers 00066640, 00066644, 00066645, and M2B459. (Ex. 316).

266. On November 27, 2001, Judge Porteous gambled at the Treasure Chest Casino in Kenner, Louisiana. (Ex. 318).

267. On November 27, 2001, Judge Porteous took out two $1,000 markers at the Treasure Chest Casino in Kenner, Louisiana, identified by marker numbers 00067888 and 00067893. Judge Porteous repaid both markers the same day with chips. (Ex. 318).

268. On December 11, 2001, Judge Porteous gambled at the Treasure Chest Casino in Kenner, Louisiana. (Ex. 319).

269. On December 11, 2001, Judge Porteous took out two $1,000 markers at the Treasure Chest Casino in Kenner, Louisiana, identified by marker numbers 00068410 and 00068415. Judge Porteous repaid both markers the same day with chips. (Ex. 319).

270. On April 1, 2002, Judge Porteous gambled at the Treasure Chest Casino in Kenner, Louisiana. (Ex. 322).

271. On April 1, 2002, Judge Porteous took out two $1,000 markers at the Treasure Chest Casino in Kenner, Louisiana, identified by marker numbers 00072228 and 00072229, and he also took out one $500 marker identified by marker number 00072234. Judge Porteous repaid all three markers the same day with chips. (Ex. 322).

272. On September 28, 2001, Judge Porteous gambled at Harrah's Casino in New Orleans, Louisiana. (Ex. 314).

273. On September 28, 2001, Judge Porteous took out two $1,000 markers at Harrah's Casino in New Orleans, Louisiana, identified by marker numbers 0099123 and 0099130. (Ex. 314).

274. On September 28, 2001 Judge Porteous wrote a check to Harrah's Casino to repay marker numbers 0099123 and 0099130. Judge Porteous's check cleared Harrah's Casino on October 28, 2001. (Ex. 314).

275. On December 20, 2001, Judge Porteous gambled at Harrah's Casino in New Orleans, Louisiana. (Ex. 320).

276. On December 20, 2001, Judge Porteous took out a $1,000 marker at Harrah's Casino in New Orleans, Louisiana, identified by marker number 0106851. (Ex. 320).

277. On December 20, 2001 Judge Porteous wrote a check to Harrah's Casino to repay marker number 0106851. Judge Porteous's check cleared Harrah's Casino on November 9, 2002. (Ex. 320).

278. On October 31–November 1, 2001, Judge Porteous gambled at the Beau Rivage Casino in Biloxi, Mississippi.

279. On October 31, 2001, Judge Porteous took out five $500 markers at the Beau Rivage Casino in Biloxi, Mississippi, identified by marker numbers 164622, 164628, 164637, 164649, and 164652. (Ex. 317).

280. On November 1, 2001, Judge Porteous took out a $500 marker at the Beau Rivage Casino in Biloxi, Mississippi, identified by marker number 164659. Judge Porteous repaid $2,500 with chips at the cage that day and repaid another $500 with chips at the pit. (Ex. 317).

281. On February 12, 2002, Judge Porteous gambled at the Grand Casino Gulfport in Gulfport, Mississippi. (Ex. 321).

282. On February 12, 2002, Judge Porteous took out a $1,000 marker at the Grand Casino Gulfport in Gulfport, Mississippi, identified by marker number MK169742. Judge Porteous repaid that marker the same day. (Ex. 321).

283. On May 26, 2002, Judge Porteous gambled at the Grand Casino Gulfport in Gulfport, Mississippi. (Ex. 323).

284. On May 26, 2002, Judge Porteous took out a $1,000 marker at the Grand Casino Gulfport in Gulfport, Mississippi, identified by marker number MK179892. Judge Porteous repaid that marker the same day. (Ex. 323).

285. On July 4–5, 2002, Judge Porteous gambled at the Grand Casino Gulfport in Gulfport, Mississippi. (Ex. 325).

286. On July 4, 2002, Judge Porteous took out two $1,000 markers at the Grand Casino Gulfport in Gulfport, Mississippi, identified by marker numbers MK183825 and MK183833. (Ex. 325).

287. On July 5, 2002, Judge Porteous took out a $500 marker at the Grand Casino Gulfport in Gulfport, Mississippi, identified by marker number MK183917. Judge Porteous repaid $1,200 to the casino that day. (Ex. 325).

288. When Judge Porteous left the Grand Casino Gulfport in Gulfport, Mississippi on July 5, 2002, he owed $1,300 to the casino. (Ex. 325).

289. On August 2, 2002, Judge Porteous wrote a $1,300 check to the Grand Casino Gulfport in Gulfport, Mississippi, which cleared his Fidelity money market account on August 6, 2002. After that check cleared, Judge Porteous's balance due and owing to the Grand Casino Gulfport was $0. (Ex. 325).

290. On August 13, 2001, Judge Porteous applied for a Capital One credit card. (Ex. 341(a)).

291. Judge Porteous never sought permission from Bankruptcy Trustee S.J. Beaulieu, Jr. to obtain or use a new Capital One credit card.

292. Judge Porteous was approved for a Capital One credit card with a $200 limit in August 2001. (Ex. 341(b)).

293. Judge Porteous started using his Capital One credit card on September 17, 2001, when he charged $39.03 at Lucys Restaurant in New Orleans, Louisiana. (Ex. 341(b)).

294. Judge Porteous exceeded his $200 credit limit on his Capital One credit card for the statement period of September 14, 2001 to October 13, 2001, and, as a result, he was charged a $29 "overlimit fee" on October 16, 2001. (Ex. 341(b)).

295. Judge Porteous Capital One credit card statements for the periods ending on December 13, 2001, January 13, 2002, September 13, 2002, December 13, 2002, January 13, 2003, February 13, 2003, and March 13, 2003 all showed that Judge Porteous had not paid his credit card balance in full. (Ex. 341(b)).

296. Judge Porteous's Capital One credit card statement for the time period of May 14, 2002 to June 13, 2002 showed that Judge Porteous's credit limit was increased to $400. (Ex. 341(b)).

297. Judge Porteous's Capital One credit card statement for the time period of November 14, 2002 to December 13, 2002 showed that Judge Porteous's credit limit was increased to $600. (Ex. 341(b)).

298. On July 4, 2002, Judge Porteous requested and was granted a credit limit increase from $2,000 to $2,500 at the Grand Casino Gulfport in Gulfport, Mississippi by filling out a "Credit Line Change Request" form. (Ex. 324).

299. Judge Porteous took out $2,500 in markers at the Grand Casino Gulfport in Gulfport, Mississippi on July 4–5, 2002. (Ex. 325).

300. Judge Porteous never sought permission from Bankruptcy Trustee S.J. Beaulieu, Jr. to apply for an increased credit limit at the Grand Casino Gulfport in Gulfport, Mississippi.

XI. Article IV—Judge Porteous's Confirmation

301. In 1994, Judge Porteous, in connection with his nomination to be a Federal judge, was subject to an FBI background investigation, was required to fill out various forms and questionnaires, and was interviewed by the FBI.

302. In connection with his nomination to be a Federal judge, Judge Porteous filled out and signed a document entitled "Supplement to Standard Form 86." (Ex. 69 (b) at PORT00298).

303. The Supplement to Standard Form 86 filled out by Judge Porteous contains the following question and answer:

> Question 10S: Is there anything in your personal life that could be used by someone to coerce or blackmail you? Is there

anything in your life that could cause an embarrassment to you or to the President if publicly known? If so, please provide full details?

Answer: "No."

304. The Supplement to Standard Form 86 was signed by Judge Porteous under the following statement:

> I understand that the information being provided on this supplement to the SF- 86 is to be considered part of the original SF- 86 dated April 27, 1994 and a false statement on this form is punishable by law.

305. On or about July 6, 1994 in connection with his FBI background investigation, Judge Porteous was interviewed by the FBI and, according to their interview memorandum, he stated in substance that "he was not concealing any activity or conduct that could be used to influence, pressure, coerce, or compromise him in any way or that would impact negatively on the candidate's character, reputation, judgment or discretion." (Ex. 69 (b) at PORT 000000294).

306. On August 18, 1994, in connection with his FBI background investigation, Judge Porteous was interviewed a second time by the FBI and, according to their interview memorandum, he stated in substance that "he was unaware of anything in his background that might be the basis of attempted influence, pressure, coercion or compromise and/or would impact negatively on his character, reputation, judgment or discretion." (Ex. 69 (b) at PORT 000000493–94).

307. During the Senate confirmation process, Judge Porteous was required to complete a United States Senate Committee on the Judiciary Questionnaire for Judicial Nominees. As part of the Questionnaire, Judge Porteous was asked the following question and provided the following answer:

> Question 11: Please advise the Committee of any unfavorable information that may affect your nomination.
>
> Answer: To the best of my knowledge, I do not know of any unfavorable information that may affect my nomination. (Ex. 69 (a) at PORT000049).

308. The United States Senate Committee on the Judiciary required that an affidavit be submitted by Judge Porteous along with the completed Questionnaire for Judicial Nominees. The affidavit signed by Judge Porteous and a notary reads as follows:

> Affidavit

I, Gabriel Thomas Porteous, Jr., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

Gretna, Louisiana, this 6 day of September, 1994. (Ex. 69 (a) at PORT 000050).

Attachment Three

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April 21, 2010

By Electronic and Regular Mail

Alan I. Baron, Esquire
Mark Dubester, Esquire
Harold Damelin, Esquire
Special Impeachment Counsel
Congress of the United States
Washington, D.C. 200515

Re: Impeachment of Judge G. Thomas Porteous – Stipulations

Dear Messrs. Baron, Dubester and Damelin:

I am writing in response to Mr. Baron's letters of April 9 & 19, 2010. These letters ask us to stipulate, on behalf of Judge Porteous, to the authenticity of certain documents and to certain factual assertions. As noted in our April 9, 2010 letter to the Chair and Vice Chair of the Senate Impeachment Trial Committee, we are willing to entertain stipulations. To that end, we have begun to review the materials you have provided and offer the following observations.

As to the documentary stipulations, we anticipate that we will be able to agree that the majority of the documents are authentic while reserving all other objections. However, due to the large volume of items included on the exhibit list and the accompanying compact disc we received on March 23, 2010 (a total of 9,702 pages), we are still in the process of reviewing these documents. In addition, there are a number of exhibits on the disc that have either been redacted or that are composite exhibits that appear to be incomplete. Because we cannot stipulate to these exhibits in their current form, we will identify these exhibits and will contact you to discuss them. As our review progresses we will also contact you to discuss agreeing on a method of identifying those documents that fall within a listed composite exhibit so it is clear that both parties understand what is being stipulated to within each composite exhibit.

Finally, the 308 proposed factual stipulations you provided on April 19 will also take some time to review and evaluate. My initial look at these proposals leads me to believe that a number of stipulations will be possible. I should note, however, we are unlikely to agree to a

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stipulation that does little more than recite a portion of an exhibit, given that the relevancy and admissibility of the underlying document is still unresolved.

We will continue to work through both the documents and the factual stipulations as expeditiously as possible and will likely address both of these issues on a rolling basis in an effort to keep this process moving. Similarly, we will begin to evaluate possible stipulations that we might seek on behalf of Judge Porteous and, to the extent we identify any, we will forward them to you for your consideration.

Please let me know if you have any questions. With best regards, I remain,

Sincerely,

Richard W. Westling

RWW/nr

168377

Attachment Four

United States Senate

IMPEACHMENT TRIAL COMMITTEE
(ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS)
HART SENATE OFFICE BUILDING, ROOM SH-8020
WASHINGTON, DC 20510

IMPEACHMENT TRIAL COMMITTEE
DISPOSITION OF PROPOSED STIPULATIONS OF FACT
SUBMITTED BY THE HOUSE MANAGERS
SIXTH ORDER

As recited in its Fourth Order, dated May 24, 1989, the committee has undertaken a review of the Revised Stipulation of Facts proposed by the House on March 31, 1989, in an effort to narrow the issues in the pending impeachment proceedings to those matters which are truly in dispute.

In the course of this review, careful consideration has been given to the proposed stipulations, to Judge Hastings' objections both to the stipulation process as a whole and to particular proposed stipulations, as set forth in his written submissions of April 2, May 18, and June 1, 1989, and to the argument of counsel on April 12 and May 18, 1989. In addition, each of the proposed stipulations has been independently reviewed in light of the testimony and other documents available to the committee from prior proceedings.

Based on the above, thos^ proposed stipulations which may properly be accepted and treated as evidence of fact, without need for the submission of formal or additional proof, have been identified for purposes of the committee's evidentiary proceedings. Those proposed stipulations are enumerated in Section I, below. Where an objection or the

committee's own review has shown that a proposed stipulation is in some measure factually inaccurate, insufficiently supported by the prior record, or is otherwise objectionable, the proposed fact has either not been accepted (Section II, below) or has been revised to correct inaccuracies or to take account of an objection (Section III, below, and Appendix "A" to this order). Revised stipulations may be treated by the parties as evidence of fact for purposes of the evidentiary hearing, after the parties have had the opportunity, as described below, to review and respond to them.

A number of factors have been used in determining whether each particular proposed stipulation should be accepted and treated as evidence of fact for purposes of the evidentiary proceedings. For example, proposed stipulations generally were accepted where Judge Hastings expressly stated his acceptance or nonobjection (see, e.g., Nos. 156, 182, 198 254-56); where no specific objection was made which called into question the truth or accuracy of the proposed stipulation, and documentary materials and prior testimony, often admitted at prior proceedings without Judge Hastings' objection and often subject to his stipulation, squarely supported the proposed stipulation, (see, e.g, 39, 40, 43-45, 71-72, 77, 90, 186); where undisputed facts were accurately drawn from court docket entries or other court records (see,

e.g., Nos. 6-8, 11, 13, 15, 215-16, 219, 225, 227, 228, 302, 312); or where Judge Hastings' own testimony at his criminal trial confirmed the contents of the stipulation (see, e.g., Nos. 4, 5, 89, 184, 188, 195, 288).

Proposed stipulations generally were refused where, for example, one or more of the following circumstances was present: where the proposed stipulation was solely or principally dependent on the testimony of witnesses, such as FBI agents, and/or internal FBI documents, whose credibility and accuracy Judge Hastings has questioned (see, e.g., Nos. 29, 30, 32, 144, 147-49); where they were central to a disputed issue, upon which conflicting testimony clearly will be presented at the proceedings (see, e.g., Nos. 171, 173); where it was concluded that the evidence could be simply and better introduced through a witness' full testimony on a matter or through an unexcerpted transcript of a recorded conversation rather than by excerpts or characterizations of testimony or conversations (see, e.g., Nos. 50, 52, 53, 104, 106, 108, 116, 122, 229-36, 239-40, 243, 244, 248-253, 259-262, 264, 265)*/; where the proposed stipulations contained characterizations or inferences, rather than simply factual

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*/ The committee notes that where the contents or meaning of a recorded conversation are susceptible of varying interpretations, the actual tape recording, in addition to a transcript, should be offered.

98-199 O—89——26

recitations of events, (see, e.g., Nos. 100, 110); where it was not possible to find sufficient support in the evidence known or cited in House filings (see, e.g., Nos. 65, 174, 247, 273), where there was a serious question about the admissibility of the evidence which should be considered at the proceedings (see, e.g., No. 375) and where Judge Hastings interposed specific and substantial objections. Where it was possible to revise a proposed stipulation to correct factual inaccuracies, correlate it more closely to the documentary materials and evidence from which it was drawn or to accomodate a valid objection or concern of the committee, a proposed revision has been made (see Appendix "A").

In issuing this order, the committee has made no determinations as to the relevance of any particular matter. A finding that a particular proposed stipulation will be treated as evidence of fact for purposes of these proceedings is not a determination that that fact is relevant; conversely, a finding that a proposed stipulation should not be accepted does not constitute any ruling that the matters which it concerns are irrelevant. Nor is any party precluded from introducing evidence on or contravening any matter that is the subject of an accepted stipulation. In sum, where a proposed stipulation is accepted, the need for the submission of formal proof to establish the contents

of that stipulation as fact has been eliminated. Where a proposed stipulation has not been accepted, the proponent of that evidence must resort to other means of proof.

The parties should advise the committee, on or before June 28, 1989, if they believe that the stipulations as revised contain factual errors or if they otherwise object to their acceptance at the evidentiary proceedings. Judge Hastings' general objections to this process of identifying facts that are not in dispute are fully stated in the record of these proceedings, and need not be reiterated in order to be preserved.

SECTION I

Proposed Stipulations Accepted as Evidence of Fact Pursuant to this Order

A. Airline Records

39, 40, 43, 44, 45, 71, 72, 77, 90, 99, 181, 192, 193, 194, 267

B. Telephone Records

36, 38, 186, 187, 189, 191, 285

C. Telephone Messages

None

D. Hotel Record

46, 73, 74, 91, 132

E. Court Decisions

None

F. Record of United States v. Romano

6, 7, 8, 11, 13, 15, 16, 20, 24, 25, 26, 27

G. Record of United States v. Borders

215, 216

H. Record of United States v. Hastings

206, 213, 219, 225, 227, 228

I. Judge Hastings' Trial Testimony

4, 5, 89, 109, 127, 128, 129, 167, 168, 183, 184, 188, 195, 288

J. Geographical Information

182, 254, 255, 256

K. Nagra Body Recordings

373

L. Other Tape Recordings

101, 103, 107, 115, 117, 121, 123, 125, 361

M. FBI Reports

31, 60, 130, 131, 142, 150, 196, 318

N. 1985 Wiretap Application and Progress Reports

302, 312, 315

O. Miscellaneous Proof

2, 3, 33, 62, 63, 64, 66, 78, 79, 80, 86, 151, 156, 198, 218, 289, 290, 291, 301, 346, 348, 352, 353, 372, 376, 377

SECTION II

Proposed Stipulations Which Have Not Been Accepted

A. Airline Records

67, 68, 69, 70

B. Telephone Records

171, 173, 174, 247, 273, 283

C. Telephone Messages

102, 275, 282

D. Hotel Records

None

E. Court Decisions

None

F. Record of United States v. Romano

100, 110

G. Record of United States v. Borders

None

H. Record of United States v. Hastings

221, 222

I. Judge Hastings' Trial Testimony

169, 170, 180, 229-236, 239, 240, 243, 244, 248-253, 259-262, 264, 265, 287

J. Geographical Information

185

K. Nagra Body Recordings

47-57, 92-98, 141

L. Other Tape Recordings

104, 105, 106, 108, 116, 122, 124, 139

M. FBI Reports

29, 30, 32, 134, 143, 144, 147, 148, 149, 152, 153

N. 1985 Wiretap Application and Progress Reports

None

O. Miscellaneous Proof

59, 65, 81, 82, 113, 135, 138, 140, 179, 223, 224, 263, 295, 375

SECTION III

Proposed Stipulations Which Have Been Revised And Are Submitted to the Parties For their Review and Response

A. Airline Records

61

B. Telephone Records

41, 190, 201, 269, 280, 284

C. Telephone Messages

34, 35, 37, 42, 136, 272, 277, 278, 279, 286

D. Hotel Records

175

E. Court Decisions

21, 111

F. Record of United States v. Romano

12, 270, 14, 271, 17, 18, 19, 118

G. Record of United States v. Borders

202, 203, 214, 217

H. Record of United States v. Hastings

204, 205, 207, 208, 209, 211, 212, 220, 226

I. Judge Hastings' Trial Testimony

163, 164, 165, 166, 266, 281

J. Geographical Information

None

K. Nagra Body Recordings

None

L. Other Tape Recordings

126, 360, 366

M. FBI Reports

133, 145, 146

N. 1985 Wiretap Application and Progress Reports

303, 304, 306, 308, 310, 311, 317, 319, 321, 322, 328, 334

O. Miscellaneous Proof

58, 76, 210, 292, 293, 294, 347, 351, 354, 374, 378

The full text of the revised stipulations is attached to this order as Appendix "A."

Jeff Bingaman, Chairman

Arlen Specter, Vice Chairman

Dated: June 23, 1989

In The Senate of the United States

Sitting as a Court of Impeachment

In re:	)
Impeachment of G. Thomas Porteous, Jr.,	)
United States District Judge for the	)
Eastern District of Louisiana	)

SUPPLEMENTAL FILING BY THE HOUSE OF REPRESENTATIVES IN SUPPORT OF ITS PRELIMINARY REQUESTS FOR SUBPOENAS AND IMMUNITY

Pursuant to the Senate Impeachment Trial Committee's Scheduling Order of June 21, 2010[1] and the request made by the Committee's staff at the meeting of counsel on June 10, 2010, the House of Representatives ("House"), through its Managers and counsel, respectfully submits to the Committee: 1) a preliminary list of those individuals for whom the House seeks a subpoena;[2] 2) a proffer as to their expected testimony, and 3) a designation of those individuals for whom formal immunity is sought.[3]

[1]The House recognizes that the updated scheduling order does not require the subpoena/immunity requests be filed until August 2, 2010. However, the House seeks to have its witnesses under subpoena as soon as possible so that they and their counsel may plan their schedules for the trip to Washington D.C. As the House has indicated, it is possible that some of these witnesses may be excused or only called in rebuttal if necessary.

[2]The House reserves the right to seek additional subpoenas if such a request becomes necessary during the trial preparation process.

[3]All witnesses for whom immunity is being requested have sought and been granted immunity at each of the proceedings at which they have testified, including proceedings before the Grand Jury, the Fifth Circuit, the House of Representatives or at depositions conducted by the House Impeachment Task Force staff.

1. Hon. G. Thomas Porteous, Jr., (Immunity Order Only)

The House expects Judge Porteous to testify consistently with his Fifth Circuit Hearing testimony, in which he admitted receiving cash from Mr. Amato during the pendency of the Liljeberg case, and admitted to engaging in financial conduct which was not truthfully disclosed in his bankruptcy filings or that was in violation of the Order of the Bankruptcy Judge. In addition, the House expects Judge Porteous to admit certain facts surrounding his relationship with Louis and Lori Marcotte. Judge Porteous was provided an immunity order in connection with his being compelled to testify before the Fifth Circuit Special Committee.

2. Jacob Amato, Jr. (Subpoena and Immunity Order)

The House expects Mr. Amato will testify to things of value that he and his former partner, Robert Creely, provided to Judge Porteous over the years. In particular, Mr. Amato will testify that in October 1996, Judge Porteous refused to recuse himself in the Liljeberg case, where Mr. Amato represented one of the parties, notwithstanding the fact that Mr. Amato and his partner, Mr. Creely, had previously given Judge Porteous, over the course of time, approximately $20,000. Mr. Amato will also testify that in June 1999, while the Liljeberg case was pending, Judge Porteous requested that Mr. Amato give him approximately $2,000, and Mr. Amato did so.

3. Robert Creely (Subpoena and Immunity Order)

The House expects Mr. Creely will testify to things of value that he and his former law partner, Jacob Amato, provided to Judge Porteous over the years. Mr. Creely will testify to what was, in substance, a scheme whereby Judge Porteous, when he was a state judge, assigned Mr. Creely "curatorships" for which Mr. Creely received a fee, and

Mr. Creely in turn provided Judge Porteous cash. He will also testify that in May 1999, while his partner (Mr. Amato) represented a party in the Liljeberg case then pending before Judge Porteous, Mr. Creely paid for Judge Porteous's hotel room and some expenses for Judge Porteous's son's bachelor party dinner in Las Vegas.

4. Leonard Levenson, Esq. (Subpoena and Immunity Order)

The House expects Mr. Levenson to testify that both prior to and during his involvement in the Liljeberg case, which was assigned to Judge Porteous, he treated Judge Porteous to numerous meals and traveled with Judge Porteous to several locations. He will also testify that Judge Porteous failed to disclose their relationship or Judge Porteous's relationship with Mr. Amato (about which Mr. Levenson was unaware) at the October 1996 recusal hearing in the Liljeberg case.

5. Donald Gardner, Esq. (Subpoena Only)

The House expects Mr. Gardner to testify that over the course of his legal career, he has provided Judge Porteous cash and meals, and that while Judge Porteous was a state judge he assigned Mr. Gardner curatorships. He will also testify how it came to be that he was retained to represent Lifemark, a party in the Liljeberg case, after Mr. Levenson and Mr. Amato were retained to represent the opposing party (the Liljebergs).

6. Rhonda Danos (Subpoena and Immunity Order)

The House expects Ms. Danos, Judge Porteous's former secretary, to testify that Louis Marcotte and Lori Marcotte paid for meals, car repairs and at least one trip to Las Vegas for Judge Porteous; that the Marcottes paid for several trips for her to Las Vegas as well; and that Judge Porteous took official actions for the benefit of the Marcottes. She will also testify that Judge Porteous prepared the contents of his financial statements,

which she thereafter typed as he directed. She will identify some of the financial transactions that she handled at Judge Porteous's request around the time he was filing for personal bankruptcy. Lastly, she will testify to Judge Porteous's close relationship with the attorneys in the Liljeberg case, and will confirm that they provided Judge Porteous things of value over time.

7. Joseph Mole, Esq. (Subpoena Only)

The House expects Mr. Mole to testify that when he learned that the opposing party in the Liljeberg case had retained Mr. Amato and Mr. Levenson, he filed a motion to recuse Judge Porteous. At that time, he was unaware that Judge Porteous had ever received money from Mr. Amato and his partner, Mr. Creely. He will describe Judge Porteous's denial of that recusal motion. He will testify that he was unaware that when the Liljeberg case was pending, Judge Porteous continued to accept things of value from Mr. Amato and Mr. Levenson. He will also testify that he retained Mr. Gardner to assist him in representing Lifemark to "level the playing field" because the Liljebergs had retained Mr. Amato and Mr. Levenson.

8. Louis Marcotte (Subpoena Only)

The House expects Mr. Marcotte to testify that over a period of time, while running a bail bonds business in Jefferson Parish, Louisiana, he gave Judge Porteous numerous things of value, including paying for expensive lunches, car repairs, house repairs, and a trip for Judge Porteous to Las Vegas. He will testify that in return, Judge Porteous signed numerous bond orders sought by Mr. Marcotte, set aside or expunged convictions of two Marcotte employees (Aubrey Wallace and Jeff Duhon), and helped

vouch for Mr. Marcotte to assist him in forming relations with other state judges. Mr. Marcotte has pleaded guilty to corruption offenses and was incarcerated.

9. Lori Marcotte (Subpoena Only)

The House expects Ms. Marcotte to testify that over a period of time, while helping her brother Louis Marcotte run a bail bonds business in Jefferson Parish, Louisiana, she and her brother gave Judge Porteous numerous things of value, including paying for expensive lunches, car repairs, house repairs, and paying for a trip for Judge Porteous to Las Vegas. She will testify that in return, Judge Porteous signed numerous bond orders sought by her and her brother Louis Marcotte, set aside or expunged convictions of two Marcotte employees (Aubrey Wallace and Jeff Duhon), and helped vouch for Louis Marcotte to assist him in forming relations with other state judges. Ms. Marcotte pleaded guilty to corruption offenses and was placed on home detention and probation.

10. Ronald Bodenheimer (Subpoena Only)

The House expects Mr. Bodenheimer, a former state judge, to testify that while Judge Porteous was a Federal judge, he vouched for Louis and Lori Marcotte and that as a result, Judge Bodenheimer formed a corrupt relationship with the Marcottes that consisted of the Marcottes providing Judge Bodenheimer things of value, and Judge Bodenheimer taking official acts in connection with setting bonds that benefitted the Marcottes. He will also testify that as a result of that relationship, he was prosecuted and pleaded guilty to mail fraud.

11. Jeffrey Duhon (Subpoena Only)

The House expects Mr. Duhon to testify that while working for Louis Marcotte, he (Duhon) took care of Judge Porteous's cars and did repairs at Judge Porteous's house. He will confirm that Judge Porteous took numerous official actions for the Marcottes, including expunging a criminal conviction of Duhon's as a favor to the Marcottes.

12. Aubrey Wallace (Subpoena Only)

The House expects Mr. Wallace to testify that while working for Louis Marcotte, he (Wallace) took care of Judge Porteous's cars and did home repairs at Judge Porteous's house. He will confirm that Judge Porteous took numerous official actions for the Marcottes, including setting aside a criminal conviction of Wallace's as a favor to the Marcottes.

13. Michael J. Reynolds (Subpoena Only)

The House expects Mr. Reynolds to testify that when he was an assistant district attorney in Jefferson Parish, Louisiana, he appeared before Judge Porteous on behalf of the State when Judge Porteous set aside the conviction of Marcotte employee Aubrey Wallace, and that in his experience as a prosecutor, this act was highly unusual.

14. Bruce Netterville, Esq. (Subpoena and Immunity Order)

The House expects Mr. Netterville will testify that Louis and Lori Marcotte had a close relationship with Judge Porteous, that he (Netterville) was present on a trip to Las Vegas with the Marcottes and Judge Porteous (as to which other testimony would establish that the Marcottes paid for the trip), that he was present when Judge Porteous set aside Aubrey Wallace's felony conviction – an act that Netterville knew from experience as a criminal defense attorney in Jefferson Parish was highly unusual.

15. Claude C. Lightfoot, Esq. (Subpoena Only)

The House expects Mr. Lightfoot, who was Judge Porteous's counsel in connection with his personal bankruptcy, to testify that he was unaware of numerous of Judge Porteous's financial transactions prior to and during bankruptcy, including Judge Porteous's failure to report certain preferred creditors and his failure to report his receipt of a tax refund, as well Judge Porteous's incurring gambling debts during the pendency of bankruptcy, in violation of the bankruptcy court order.

16. William Greendyke, Esq. (Subpoena Only)

The House expects Mr. Greendyke, a former Federal bankruptcy judge, to testify that when he was assigned Judge Porteous's bankruptcy case, he was unaware of numerous of Judge Porteous's financial transactions prior to and during bankruptcy, including Judge Porteous's failure to report certain preferred creditors and his failure to report his receipt of a tax refund, as well Judge Porteous's incurring gambling debt during the pendency of bankruptcy.

17. Former FBI Special Agent Bobby Hamil (Subpoena Only)

The House expects Mr. Hamil to describe the FBI background check process and identify statements Judge Porteous made to him in two separate interviews in which Judge Porteous denied having anything in his background that could subject him to coercion, leverage or blackmail.

18. Former FBI Special Agent Cheyanne Tackett (Subpoena Only)

The House expects Ms. Tackett to describe the FBI background check process and identify statements Judge Porteous made to her in an interview in which Judge

Porteous denied having anything in his background that could subject him to coercion, leverage or blackmail.

Respectfully submitted,

THE UNITED STATES HOUSE OF REPRESENTATIVES

By

Adam Schiff, Manager

Bob Goodlatte, Manager

Alan I. Baron
Special Impeachment Counsel

Managers of the House of Representatives: Adam B. Schiff, Bob Goodlatte, Zoe Lofgren, Henry C. "Hank" Johnson, F. James Sensenbrenner, Jr.

June 30, 2010

In The Senate of The United States
Sitting as a Court of Impeachment

In re:	)
Impeachment of G. Thomas Porteous, Jr., United States District Judge for the Eastern District of Louisiana	)

JUDGE G. THOMAS PORTEOUS, JR.'S REQUESTS FOR SUBPOENAS AND IMMUNITY

NOW BEFORE THE SENATE, comes Respondent, the Honorable G. Thomas Porteous, Jr., a Judge of the United States District Court for the Eastern District of Louisiana, and files his requests for subpoenas and immunity for witnesses to be called during the evidentiary hearing in this matter.[1] Like the House Managers, Judge Porteous reserves the right to seek additional subpoenas if such becomes necessary during the trial preparation process. (*See* Supplemental Filing by the House of Representatives in Support of its Preliminary Requests for Subpoenas and Immunity (dated June 30, 2010) at n. 2, requesting the same.)

Judge Porteous requests that the United States Senate subpoena the following individuals to testify at the evidentiary hearing in this matter:

1. **John M. Mamoulides** – Judge Porteous expects former Jefferson Parish District Attorney Mamoulides to testify about Judge Porteous's appointment to the state bench, his experience and relationship with Judge Porteous as a state court judge, the practice of setting bonds in Jefferson Parish, the manner in which Assistant District Attorneys interacted with state court judges in Jefferson Parish, including Judge Porteous, and the overall relationships between

[1] There are a number of witnesses, including certain experts, that Judge Porteous intends to call to testify at the evidentiary hearing who do not require either a subpoena or immunity. Per the Committee's June 21, 2010 Order, Judge Porteous will submit a list of all witnesses that he intends to call to testify at the evidentiary hearing on August 5, 2010.

state court judges and other participants in the Jefferson Parish legal system during the relevant time period.

2. **Judge M. Joseph Tiemann** – Judge Porteous expects Judge Tiemann to testify about his experience and relationship with Judge Porteous, as well as the practices of Jefferson Parish judges, during the relevant time period, in setting bonds and in interacting with others participants in the legal system.

3. **S. J. Beaulieu, Jr.** – Judge Porteous expects Mr. Beaulieu, the Trustee in his bankruptcy proceeding, to testify about the facts and circumstances regarding the Porteouses' bankruptcy. This includes, but is not limited to, an overview of the history of that bankruptcy proceeding, the applicable legal standards, Mr. Beaulieu's communications with Judge Porteous, his instructions to Judge Porteous, his evaluation of the seriousness of the mistakes made by Judge Porteous during the bankruptcy proceedings, his experience with other bankruptcies, and his communications with Judge Porteous's bankruptcy counsel and others with regard to the Porteouses' bankruptcy proceeding.

4. **Henry Hildebrand** – Judge Porteous expects Mr. Hildebrand to testify as an expert with regard to the allegations in Article III and Chapter 13 bankruptcy petitions generally, including applicable legal principles, standards, and practices relating to personal bankruptcies during the relevant time period. Mr. Hildebrand's expert testimony will specifically focus on his experience as a current Chapter 13 Trustee.

5. **Judge Ronald Barliant** – Judge Porteous expects former United States Bankruptcy Judge for the Northern District of Illinois Ronald Barliant to testify as an expert on issues related to Article III, including the applicable legal principles, standards, and practices

relating to personal bankruptcies during the relevant time period. Judge Barliant's expert testimony will specifically focus on his experience as a former federal bankruptcy judge.

6. **Dianne Lamulle** – Judge Porteous expects Ms. Lamulle to testify about her handling of curatorships assigned to Robert Creely and her interactions with Judge Porteous and his office.

7. **Michael Porteous** – Judge Porteous expects Michael Porteous to testify about his Court delivery service and his interactions with Louis and Lori Marcotte.

8. **Professor Dane S. Ciolino** – Judge Porteous expects Professor Ciolino to testify as an expert on issues related to the traditions and practices of bond-setting in Jefferson Parish and in the State of Louisiana during the relevant time period. Professor Ciolino is also expected to testify about applicable judicial and ethical standards.

9. **Professor G. Calvin Mackenzie** – Judge Porteous expects Professor Mackenzie to testify as an expert regarding the use of SF-86's, FBI background checks, the federal appointments process, and Senate confirmations.

10. **Robert Rees** – Judge Porteous expects Mr. Rees to testify about the facts and circumstances surrounding the setting aside of Aubrey Wallace's conviction and the expungement of his record, as well as the general practices in Jefferson Parish regarding the setting aside of convictions and expungements.

11. **Melinda Kring (Pourciau)** – Judge Porteous expects Ms. Kring to testify about her work at Bail Bonds Unlimited, her observations of the Marcottes, their interactions with Judge Porteous, and their interactions with other judges and state and federal officials.

12. **Suzette Lacour Powers** – Judge Porteous expects Ms. Powers to testify about her experience and observations as a law clerk to Judge Porteous during his time on the state and federal bench.

13. **Susan Hoffman, LCSW** – Judge Porteous expects Ms. Hoffman to testify with regard to Judge Porteous's psychiatric and mental health conditions, including depressive and anxiety disorders, as well as his course of treatment for those conditions.

14. **James Barbee, M.D.** – Judge Porteous expects Dr. Barbee to testify with regard to Judge Porteous's psychiatric and mental health conditions, including depressive and anxiety disorders, as well as his course of treatment for those conditions.

15. **Adam Barnett** – Judge Porteous expects Mr. Barnett to testify about his experiences and observations working with the Marcottes and his interactions with Judge Porteous with regard to the setting and splitting of bonds.

16. **Daniel A. Petalas, Esq.** – Judge Porteous expects Mr. Petalas, an attorney with the Public Integrity Section of the Department of Justice, to testify about the government's investigations of Judge Porteous, the decision not to prosecute Judge Porteous, and communications Mr. Petalas had with members of the Fifth Circuit Court of Appeals.

17. **Peter S. Ainsworth, Esq.** – Judge Porteous expects Mr. Ainsworth, an attorney with the Public Integrity Section of the Department of Justice, to testify about the government's investigations of Judge Porteous and the decision not to prosecute Judge Porteous.

The defense does not request that any of the witnesses listed above be granted immunity in connection with their testimony. Judge Porteous will provide contact information for the witnesses listed above under separate cover.

In its Preliminary Witness Designation and Requests for Subpoenas and Immunity (dated June 8, 2010), the House of Representatives included certain witness that, if not called by the House, will likely be called by the defense. Although duplicative requests for subpoenas and/or immunity is unnecessary, Judge Porteous has included the names of those witnesses (without duplicative summaries of expected testimony) below.[2]

18. **Jacob Amato, Jr.**
19. **Robert Creely**
20. **Louis Marcotte**
21. **Lori Marcotte**
22. **Joseph Mole**
23. **Donald Gardner**
24. **Michael Reynolds**
25. **Bruce Netterville**
26. **Ronald Bodenheimer**
27. **Leonard Levenson**
28. **Claude Lightfoot**
29. **Rhonda Danos**

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[2] The House also listed Judge Porteous on its list of witnesses requiring both a subpoena and immunity and today filed a pleading regarding the propriety and precedent of compelling the accused to testify in an impeachment proceeding. As previously stated, Judge Porteous opposes any attempt by the House to compel his testimony, in violation of his Fifth Amendment rights. Whether Judge Porteous will testify in his own defense, as opposed to being compelled, is an open question that will depend on a number of factors, including the time allotted for the evidentiary hearing. Regardless, Judge Porteous would require immunity as a prerequisite to testifying. The defense does not believe that a subpoena is either appropriate or necessary.

Judge Porteous reserves the right to call any witnesses not listed above but who are listed on the House of Representatives' witness list. Judge Porteous also reserves the right to call witnesses not listed above that are otherwise required to serve as rebuttal witnesses.

Respectfully submitted,

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Counsel for G. Thomas Porteous, Jr.
United States District Court Judge
for the Eastern District of Louisiana

Dated: August 2, 2010

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2010, I served copies of the foregoing by electronic means on the House Managers, through counsel, at the following email addresses:

Alan Baron – abaron@seyfarth.com

Mark Dubester – mark.dubester@mail.house.gov

Harold Damelin – harold.damelin@mail.house.gov

Kirsten Konar – kkonar@seyfarth.com

Jessica Klein – jessica.klein@mail.house.gov

/s/ Daniel T. O'Connor

In The Senate of the United States

Sitting as a Court of Impeachment

In re:	)
Impeachment of G. Thomas Porteous, Jr.,	)
United States District Judge for the	)
Eastern District of Louisiana	)
	)

THE HOUSE OF REPRESENTATIVES' SUPPLEMENTAL DESIGNATION OF WITNESSES AND REQUESTS FOR SUBPOENAS

Pursuant to the Senate Impeachment Trial Committee's (the "Committee's") Scheduling Order of June 21, 2010 and the request made by the Committee's staff at the meeting of counsel on June 10, 2010, the House of Representatives (the "House"), through its Managers and counsel, respectfully submits to the Committee this supplemental designation of three additional witnesses, with requests for subpoenas, and a proffer of those witnesses' expected testimony.[1]

1. The Honorable Duncan Keir (Subpoena Only)

The Honorable Duncan Keir is the Chief Judge of the United States Bankruptcy Court for the District of Maryland. Judge Keir will provide expert testimony regarding Judge Porteous's Chapter 13 bankruptcy filing, which will include (i) the necessity that debtors be candid and act in good faith in bankruptcy filings, (ii) the effect of filing a bankruptcy petition under a false name, (iii) whether Judge Porteous's "no harm, no foul" defense to his false bankruptcy filings is legitimate, (iv) whether Judge Porteous violated the bankruptcy confirmation order, and (v) the

[1] This "Supplemental Designation of Witnesses and Requests for Subpoenas" is filed in addition to the June 8, 2010 "Preliminary Designations by the House of Representatives of Witnesses, Requests for Subpoenas, Requests for Immunity and Stipulations," and the June 30, 2010 "Supplemental Filing By the House of Representatives in Support of Its Preliminary Requests for Subpoenas and Immunity."

impact on the administration of the bankruptcy laws in light of the fact that the debtor in this case is a federal judge, as opposed to an ordinary citizen.

2. Professor Charles G. Geyh (Subpoena Only)

Professor Charles Geyh is the Associate Dean for Research and the John F. Kimberling Professor of Law at the Indiana University Maurer School of Law. Professor Geyh will provide expert testimony regarding the ethical implications of Judge Porteous's alleged conduct, with a focus on the Code of Conduct for United States Judges.

3. Rafael C. Goyeneche III (Subpoena Only)

Rafael Goyeneche is the President of the Metropolitan Crime Commission (the "MCC") – a nonprofit public service, citizens' organization in New Orleans, Louisiana, dedicated to improving the administration of justice, reducing the incidence of violent crime, and stamping out public corruption. Mr. Goyeneche will testify regarding his November 9, 1994 interview of Judge Porteous, in which Judge Porteous made statements concerning his relationship with Louis Marcotte and the circumstances surrounding his setting aside Aubrey Wallace's conviction.

Respectfully submitted,

THE UNITED STATES HOUSE OF REPRESENTATIVES

By

Adam Schiff, Manager

Bob Goodlatte, Manager

Alan I. Baron
Special Impeachment Counsel

Managers of the House of Representatives: Adam B. Schiff, Bob Goodlatte, Zoe Lofgren, Henry C. "Hank" Johnson, F. James Sensenbrenner, Jr.

August 2, 2010

In The Senate of the United States

Sitting as a Court of Impeachment

In re:	)
Impeachment of G. Thomas Porteous, Jr.,	)
United States District Judge for the	)
Eastern District of Louisiana	)
	)

MEMORANDUM ON BEHALF OF THE HOUSE OF REPRESENTATIVES IN SUPPORT OF CALLING JUDGE PORTEOUS AS A WITNESS

The House of Representatives (the "House"), through its Managers and counsel, submits the following Memorandum in Support of Calling Judge Porteous as a Witness and states as follows:

The House has listed Judge Porteous as a potential witness to be called at the forthcoming impeachment trial. The House, however, is not seeking immunity for Judge Porteous. Accordingly, at this point, the Senate is not being asked by the House to take any steps regarding Judge Porteous.

The Senate has asked the House to submit a memorandum in support of the House calling Judge Porteous as a witness.[1] It appears that in the limited number of judicial impeachments that have gone to trial in the Senate, many, if not all, of the judges have testified and have been subject to cross-examination. The issue therefore is not whether testimony and cross-examination are appropriate, but rather whether there is any bar to the judge being called as a

[1] Congress's power to issue subpoenas in the impeachment context extends to sitting federal judges. Article I, § 3 of the Constitution explicitly provides that "the Senate shall have the sole Power to try all Impeachments." This constitutional framework creates the implied power of Congress to issue subpoenas for documents and testimony in furtherance of its constitutionally assigned role. C.f. McGrain v. Daugherty, 273 U.S. 135, 175 (1927).

witness by the House. The House is not aware of an instance in which a judge was compelled to be a witness in a Senate impeachment trial. There is ample precedent, however, in a proceeding closely related to an impeachment trial, which requires federal judges to testify concerning allegations against them, even if their appearance is involuntary. Indeed, this process has taken place in connection with this very matter.

Title 28 of the United States Code, Section 351, *et seq.*, sets forth the rules governing complaints against federal judges and judicial misconduct. The statute authorizes each judicial council and the Judicial Conference of the United States to "prescribe such rules for the conduct of proceedings under this chapter . . . as each considers to be appropriate." 28 U.S.C. § 358(a). Pursuant to that statutory provision, the Judicial Conference of the United States, chaired by the Chief Justice of the Supreme Court, promulgated Rules for Judicial-Conduct and Judicial-Disability Proceedings (the "Judicial Conference Rules") "to establish standards and procedures for addressing complaints filed by complainants or identified by chief judges."[2]

The Judicial Conference Rules specifically address the procedures to be utilized at Special Committee hearings of judicial misconduct – such as the Fifth Circuit Special Committee hearing regarding Judge Porteous – and provide as follows:

> **14. Conduct of Hearings by Special Committee**
>
> (a) Purpose of Hearings. The committee may hold hearings to take testimony and receive other evidence, to hear argument, or both. If the committee is investigating allegations against more than one judge, it may hold joint or separate hearings.
>
> (b) Committee Evidence. Subject to Rule 15, the committee must obtain material, nonredundant evidence in the form it considers appropriate. In the committee's discretion, evidence may be obtained by committee

[2] See the Judicial Conference Rules at p. 1 (March 11, 2008). A copy of the Judicial Conference Rules is attached to this Memorandum as Attachment 1.

> members, staff, or both. Witnesses offering testimonial evidence may include the complainant and the subject judge.[3]

The Judicial Conference Commentary to Rule 14 further states: "[w]ith respect to testimonial evidence, the subject judge should normally be called as a committee witness. Cases may arise in which the judge will not testify voluntarily. In such cases, subpoena powers are available, subject to the normal testimonial privileges."[4] The subpoena powers available to the Special Committees are laid out in 28 U.S.C. § 356, which states:

> (a) Judicial councils and special committees. In conducting any investigation under this chapter the judicial council, or a special committee appointed under section 353, shall have full subpoena powers as provided in section 332(d).
>
> (b) Judicial Conference and standing committees. In conducting any investigation under this chapter the Judicial Conference, or a standing committee appointed by the Chief Justice under section 331 shall have full subpoena powers as provided in that section.

Thus, under the authority prescribed by the United States Code, the Judicial Conference of the United States, chaired by the Chief Justice, and the United States circuit courts have explicitly established rules and procedures by which a judge who is the subject of a misconduct inquiry can be required to testify in those proceedings.

Moreover, Title 28 U.S.C. § 355(b)(1) clearly contemplates that the record of all proceedings before both a circuit court judicial council and the Judicial Conference shall, in cases where impeachment may be warranted, be transmitted "to the House of Representatives for whatever action the House of Representatives considers to be necessary."

The proceedings in the Circuit Court tribunals are an integral adjunct to impeachment proceedings in the House and Senate. The fact that they are empowered by legislation and

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[3] Id. at Rule 14, p. 21 (emphasis added).

[4] Id. at p. 22 (Commentary on Rule 14) (emphasis added).

implemented by Court rules to call the judge in question to testify is a powerful statement that federal judges are not wholly unaccountable for their conduct, even if it means requiring them to testify under oath.

Judge Porteous was elevated to the federal bench by the Senate, which confirmed his appointment. He is now alleged to have engaged in serious misconduct and to have misled the Senate by not disclosing corrupt conduct which, if true, would undoubtedly have terminated his candidacy for the office. The Senate confirmed his appointment based in part on his sworn statements. Now that the veracity of those statements has been seriously questioned, the Senate should have the opportunity to hear from Judge Porteous.

The Senate's processes, as well as the public interest, require that all of the relevant facts be made available to the Senate, not just those facts that counsel, in an adversarial posture, decide to put before the Senate.[5] It must be recalled that an impeachment trial is not a criminal proceeding. As Alexander Hamilton stated, it is "a method of NATIONAL INQUEST into the conduct of public men."[6] The federal rules of evidence and procedure do not apply because they may artificially hinder the Senate's ability to hear all of the evidence in order to make a profoundly important determination. Judge Porteous was willing to answer questions under oath to obtain his lofty position. He should be required to answer questions when the propriety of his remaining in that position is brought into serious question.

It is clear that Judge Porteous hopes that this case will be tried without his participation. He opposes the House using his prior immunized testimony in the Fifth Circuit. He opposes the

[5] To be sure, the citizens of this country have a stake in the integrity of the judiciary. When a federal judge, who passes judgment over the matters of private citizens, is himself alleged of misconduct and wrongdoing, it would be a disservice to the public interest to truncate artificially the evidence pertaining to that judge's conduct.

[6] THE FEDERALIST NO. 65, at 440 (Alexander Hamilton) (Cooke, ed., 1961).

House being allowed to call him as a witness. He suggests that he may not be called as a witness in his own defense.[7] The Senate's access to vital evidence should not be so limited when it has granted to the judiciary, in a process intimately related to impeachments proceedings, the power to call a judge as a witness to account for his conduct. It makes no sense for the Senate to have less power to conduct an inquiry than that granted and exercised by the circuit judicial council in this very case.

The House emphasizes that this approach is premised on the fact that Congress has granted to the judiciary the power to require a federal judge to testify at a hearing conducted to investigate allegations against that judge. Moreover, judges attain their lofty position through Senate confirmation. They should be subject to questioning in a Senate impeachment trial when the propriety of continuing to remain in that position is brought into serious question.[8]

Finally, the *in terrorum* argument advanced by counsel for Judge Porteous that they will go to court to try to stop Judge Porteous from being called to testify is unavailing. Certainly Judge Porteous can go to court, but this issue is clearly non-justiciable in light of the Supreme Court's ruling in Walter Nixon v. United States.[9] For the Senate to conduct its proceedings in a

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[7] See Judge G. Thomas Porteous, Jr.'s Motion for an Extended Evidentiary Hearing at 2, fn. 1 ("Whether Judge Porteous will testify in his own defense is still an open question.").

[8] This approach adopted by the House would, by its terms, have no application to an elected official such as the President or the Vice President.

[9] 113 S. Ct. 732 (1992). In Nixon, the Supreme Court clearly explained:

> The history and contemporary understanding of the impeachment provisions support our reading of the constitutional language. The parties do not offer evidence of a single word in the history of the Constitutional Convention or in contemporary commentary that even alludes to the possibility of judicial review in the context of the impeachment powers.
>
> * * *

manner which echoes the very manner in which an inquiry is conducted pursuant to the Rules of the Judicial Conference of the United States, will not result in any impediment to the Senate trial.

For all the foregoing reasons, the House respectfully submits that at this time it is not seeking immunity for Judge Porteous, but continues to list him as a potential witness in a Senate trial.

> Judicial involvement in impeachment proceedings, even if only for purposes of judicial review, is counterintuitive because it would eviscerate the "important constitutional check" placed on the Judiciary by the Framers. Nixon's argument would place final reviewing authority with respect to impeachments in the hands of the same body that the impeachment process is meant to regulate.

Id. at 233, 235 (internal citations omitted).

Respectfully submitted,

THE UNITED STATES HOUSE OF REPRESENTATIVES

By

Adam Schiff, Manager

Bob Goodlatte, Manager

Alan I. Baron
Special Impeachment Counsel

Managers of the House of Representatives: Adam B. Schiff, Bob Goodlatte, Zoe Lofgren, Henry C. "Hank" Johnson, F. James Sensenbrenner, Jr.

August 2, 2010

Attachment 1

JUDICIAL CONFERENCE OF THE UNITED STATES

RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS

Adopted March 11, 2008

RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS

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RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS

Preface

These Rules were promulgated by the Judicial Conference of the United States, after public comment, pursuant to 28 U.S.C. §§ 331 and 358, to establish standards and procedures for addressing complaints filed by complainants or identified by chief judges, under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364.

ARTICLE I. GENERAL PROVISIONS

1. Scope

These Rules govern proceedings under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351–364 (the Act), to determine whether a covered judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts or is unable to discharge the duties of office because of mental or physical disability.

Commentary on Rule 1

In September 2006, the Judicial Conduct and Disability Act Study Committee, appointed in 2004 by Chief Justice Rehnquist and known as the "Breyer Committee," presented a report, known as the "Breyer Committee Report," 239 F.R.D. 116 (Sept. 2006), to Chief Justice Roberts that evaluated implementation of the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351-364. The Breyer Committee had been formed in response to criticism from the public and the Congress regarding the effectiveness of the Act's implementation. The Executive Committee of the Judicial Conference directed the Judicial Conference Committee on Judicial Conduct and Disability to consider the recommendations made by the Breyer Committee and to report on their implementation to the Conference.

The Breyer Committee found that it could not evaluate implementation of the Act without establishing interpretive standards, Breyer Committee Report, 239 F.R.D. at 132, and that a major problem faced by chief judges in implementing the Act was the lack of authoritative interpretive standards. Id. at 212-15. The Breyer Committee then established standards to guide its evaluation, some of which were new formulations and some of which were taken from the "Illustrative Rules Governing Complaints of Judicial Misconduct and Disability," discussed below. The principal standards used by the Breyer Committee are in Appendix E of its Report. Id. at 238.

Based on the findings of the Breyer Committee, the Judicial Conference Committee on Judicial Conduct and Disability concluded that there was a need for the Judicial Conference to exercise its power under Section 358 of the Act to fashion standards guiding the various officers and bodies who must exercise responsibility under the Act. To that end, the Judicial Conference Committee proposed rules that were based largely on Appendix E of the Breyer Committee Report and the Illustrative Rules.

The Illustrative Rules were originally prepared in 1986 by the Special Committee of the Conference of Chief Judges of the United States Courts of Appeals, and were subsequently revised and amended, most recently in 2000, by the predecessor to the Committee on Judicial Conduct and Disability. The Illustrative Rules were adopted, with minor variations, by circuit judicial councils, to govern complaints under the Judicial Conduct and Disability Act.

After being submitted for public comment pursuant to 28 U.S.C. § 358(c), the present Rules were promulgated by the Judicial Conference on March 11, 2008.

2. Effect and Construction

(a) Generally. These Rules are mandatory; they supersede any conflicting judicial-council rules. Judicial councils may promulgate additional rules to implement the Act as long as those rules do not conflict with these Rules.

(b) Exception. A Rule will not apply if, when performing duties authorized by the Act, a chief judge, a special committee, a judicial council, the Judicial Conference Committee on Judicial Conduct and Disability, or the Judicial Conference of the United States expressly finds that exceptional circumstances render application of that Rule in a particular proceeding manifestly unjust or contrary to the purposes of the Act or these Rules.

Commentary on Rule 2

Unlike the Illustrative Rules, these Rules provide mandatory and nationally uniform provisions governing the substantive and procedural aspects of misconduct and disability proceedings under the Act. The mandatory nature of these Rules is authorized by 28 U.S.C. § 358(a) and (c). Judicial councils retain the power to promulgate rules consistent with these Rules. For example, a local rule may authorize the electronic distribution of materials pursuant to Rule 8(b).

Rule 2(b) recognizes that unforeseen and exceptional circumstances may call for a different approach in particular cases.

3. Definitions

(a) Chief Judge. "Chief judge" means the chief judge of a United States Court of Appeals, of the United States Court of International Trade, or of the United States Court of Federal Claims.

(b) Circuit Clerk. "Circuit clerk" means a clerk of a United States court of appeals, the clerk of the United States Court of International Trade, the clerk of the United States Court of Federal Claims, or the circuit executive of the United States Court of Appeals for the Federal Circuit.

(c) Complaint. A complaint is:

(1) a document that, in accordance with Rule 6, is filed by any person in his or her individual capacity or on behalf of a professional organization; or

(2) information from any source, other than a document described in (c)(1), that gives a chief judge probable cause to believe that a covered judge, as defined in Rule 4, has engaged in misconduct or may have a disability, whether or not the information is framed as or is intended to be an allegation of misconduct or disability.

(d) Court of Appeals, District Court, and District Judge. "Courts of appeals," "district court," and "district judge," where appropriate, include the United States Court of Federal Claims, the United States Court of International Trade, and the judges thereof.

(e) Disability. "Disability" is a temporary or permanent condition rendering a judge unable to discharge the duties of the particular judicial office. Examples of disability include substance abuse, the inability to stay awake during court proceedings, or a severe impairment of cognitive abilities.

(f) Judicial Council and Circuit. "Judicial council" and "circuit," where appropriate, include any courts designated in 28 U.S.C. § 363.

(g) Magistrate Judge. "Magistrate judge," where appropriate, includes a special master appointed by the Court of Federal Claims under 42 U.S.C. § 300aa–12(c).

(h) Misconduct. Cognizable misconduct:

(1) is conduct prejudicial to the effective and expeditious administration of the business of the courts. Misconduct includes, but is not limited to:

(A) using the judge's office to obtain special treatment for friends or relatives;

(B) accepting bribes, gifts, or other personal favors related to the judicial office;

(C) having improper discussions with parties or counsel for one side in a case;

(D) treating litigants or attorneys in a demonstrably egregious and hostile manner;

(E) engaging in partisan political activity or making inappropriately partisan statements;

(F) soliciting funds for organizations; or

(G) violating other specific, mandatory standards of judicial conduct, such as those pertaining to restrictions on outside income and requirements for financial disclosure.

(2) is conduct occurring outside the performance of official duties if the conduct might have a prejudicial effect on the administration of the business of the courts, including a substantial and widespread lowering of public confidence in the courts among reasonable people.

(3) does not include:

(A) an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related. If the decision or ruling is alleged to be the result of an improper motive, e.g., a bribe, ex parte contact, racial or ethnic bias, or improper conduct in rendering a decision or ruling, such as personally derogatory remarks irrelevant to the issues, the complaint is not cognizable to the extent that it attacks the merits.

(B) an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.

(i) Subject Judge. "Subject judge" means any judge described in Rule 4 who is the subject of a complaint.

Commentary on Rule 3

Rule 3 is derived and adapted from the Breyer Committee Report and the Illustrative Rules.

Unless otherwise specified or the context otherwise indicates, the term "complaint" is used in these Rules to refer both to complaints identified by a chief judge under Rule 5 and to complaints filed by complainants under Rule 6.

Under the Act, a "complaint" may be filed by "any person" or "identified" by a chief judge. See 28 U.S.C. § 351(a) and (b). Under Rule 3(c)(1), complaints may be submitted by a person, in his or her individual capacity, or by a professional organization. Generally, the word "complaint" brings to mind the commencement of an adversary proceeding in which the contending parties are left to present the evidence and legal arguments, and judges play the role of an essentially passive arbiter. The Act, however, establishes an administrative, inquisitorial process. For example, even absent a complaint under Rule 6, chief judges are expected in some circumstances to trigger the process -- "identify a complaint," see 28 U.S.C. § 351(b) and Rule 5 -- and conduct an investigation without becoming a party. See 28 U.S.C. § 352(a); Breyer Committee Report, 239 F.R.D. at 214; Illustrative Rule 2(j). Even when a complaint is filed by someone other than the chief judge, the complainant lacks many rights that a litigant would have, and the chief judge, instead of being limited to the "four corners of the complaint," must, under Rule 11, proceed as though misconduct or disability has been alleged where the complainant reveals information of misconduct or disability but does not claim it as such. See Breyer Committee Report, 239 F.R.D. at 183-84.

An allegation of misconduct or disability filed under Rule 6 is a "complaint," and the Rule so provides in subsection (c)(1). However, both the nature of the process and the use of the term "identify" suggest that the word "complaint" covers more than a document formally triggering the process. The process relies on chief judges considering known information and triggering the process when appropriate. "Identifying" a "complaint," therefore, is best understood as the chief judge's concluding that information known to the judge constitutes probable cause to believe that misconduct occurred or a disability exists, whether or not the information is framed as, or intended to be an accusation. This definition is codified in (c)(2).

Rule 3(e) relates to disability and provides only the most general definition, recognizing that a fact-specific approach is the only one available.

The phrase "prejudicial to the effective and expeditious administration of the business of the courts" is not subject to precise definition, and subsection (h)(1) therefore provides some specific examples. Although the Code of Conduct for United States Judges may be informative, its main precepts are highly general; the Code is in many potential applications aspirational rather than a set of disciplinary rules. Ultimately, the responsibility for determining what constitutes misconduct under the statute is the province of the judicial council of the circuit subject to such review and limitations as are ordained by the statute and by these Rules.

Even where specific, mandatory rules exist -- for example, governing the receipt of gifts by judges, outside earned income, and financial disclosure obligations -- the distinction between the misconduct statute and the specific, mandatory rules must be borne in mind. For example, an inadvertent, minor violation of any one of these Rules, promptly remedied when called to the attention of the judge, might still be a violation but might not rise to the level of misconduct under the statute. By contrast, a pattern of such violations of the Code might well rise to the level of misconduct.

An allegation can meet the statutory standard even though the judge's alleged conduct did not occur in the course of the performance of official duties. The Code of Conduct for United States Judges expressly covers a wide range of extra-official activities, and some of these activities may constitute misconduct. For example, allegations that a judge solicited funds for a charity or participated in a partisan political event are cognizable under the Act.

On the other hand, judges are entitled to some leeway in extra-official activities. For example, misconduct may not include a judge being repeatedly and publicly discourteous to a spouse (not including physical abuse) even though this might cause some reasonable people to have diminished confidence in the courts. Rule 3(h)(2) states that conduct of this sort is covered, for example, when it might lead to a "substantial and widespread" lowering of such confidence.

Rule 3(h)(3)(A) tracks the Act, 28 U.S.C. § 352(b)(1)(A)(ii), in excluding from the definition of misconduct allegations "[d]irectly related to the merits of a decision or procedural ruling." This exclusion preserves the independence of judges in the exercise of judicial power by ensuring that the complaint procedure is not used to collaterally attack the substance of a judge's ruling. Any allegation that calls into question the correctness of an official action of a judge -- without more -- is merits-related. The phrase "decision or procedural ruling" is not limited to rulings issued in deciding Article III cases or controversies. Thus, a complaint challenging the correctness of a chief judge's determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related -- in other words, as challenging the substance of the judge's administrative determination to dismiss the complaint -- even though it does not concern the judge's rulings in Article III litigation. Similarly, an allegation that a judge had incorrectly declined to approve a Criminal Justice Act voucher is merits-related under this standard.

Conversely, an allegation -- however unsupported -- that a judge conspired with a prosecutor to make a particular ruling is not merits-related, even though it "relates" to a ruling in a colloquial sense. Such an allegation attacks the propriety of conspiring with the prosecutor and goes beyond a challenge to the correctness -- "the merits" -- of the ruling itself. An allegation that a judge ruled against the complainant because the complainant is a member of a particular racial or ethnic group, or because the judge dislikes the complainant personally, is also not merits-related. Such an allegation attacks the propriety of arriving at rulings with an illicit or improper motive. Similarly, an allegation that a judge used an inappropriate term to refer to a class of people is not merits-related even if the judge used it on the bench or in an opinion; the correctness of the judge's rulings is not at stake. An allegation that a judge treated litigants or attorneys in a demonstrably egregious and hostile manner while on the bench is also not merits-related.

The existence of an appellate remedy is usually irrelevant to whether an allegation is merits-related. The merits-related ground for dismissal exists to protect judges' independence in making rulings, not to protect or promote the appellate process. A complaint alleging an incorrect ruling is merits-related even though the complainant has no recourse from that ruling. By the same token, an allegation that is otherwise cognizable under the Act should not be dismissed merely because an appellate remedy appears to exist (for example, vacating a ruling that resulted from an improper ex parte communication). However, there may be occasions when appellate and misconduct proceedings overlap, and consideration and disposition of a complaint under these Rules may be properly deferred by a chief judge until the appellate proceedings are concluded in order to avoid, inter alia, inconsistent decisions.

Because of the special need to protect judges' independence in deciding what to say in an opinion or ruling, a somewhat different standard applies to determine the merits-relatedness of a non-frivolous allegation that a judge's language in a ruling reflected an improper motive. If the judge's language was relevant to the case at hand -- for example a statement that a claim is legally or factually "frivolous" -- then the judge's choice of language is presumptively

merits-related and excluded, absent evidence apart from the ruling itself suggesting an improper motive. If, on the other hand, the challenged language does not seem relevant on its face, then an additional inquiry under Rule 11 is necessary.

With regard to Rule 3(h)(3)(B), a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge -- in other words, assigning a low priority to deciding the particular case. But, by the same token, an allegation of a habitual pattern of delay in a significant number of unrelated cases, or an allegation of deliberate delay in a single case arising out of an illicit motive, is not merits-related.

The remaining subsections of Rule 3 provide technical definitions clarifying the application of the Rules to the various kinds of courts covered.

4. Covered Judges

A complaint under these Rules may concern the actions or capacity only of judges of United States courts of appeals, judges of United States district courts, judges of United States bankruptcy courts, United States magistrate judges, and judges of the courts specified in 28 U.S.C. § 363.

Commentary on Rule 4

This Rule tracks the Act. Rule 8(c) and (d) contain provisions as to the handling of complaints against persons not covered by the Act, such as other court personnel, or against both covered judges and noncovered persons.

ARTICLE II. INITIATION OF A COMPLAINT

5. Identification of a Complaint

(a) Identification. When a chief judge has information constituting reasonable grounds for inquiry into whether a covered judge has engaged in misconduct or has a disability, the chief judge may conduct an inquiry, as he or she deems appropriate, into the accuracy of the information even if no related complaint has been filed. A chief judge who finds probable cause to believe that misconduct has occurred or that a disability exists may seek an informal resolution that he or she finds satisfactory. If no informal resolution is achieved or is feasible, the chief judge may identify a complaint and, by written order stating the reasons, begin the review provided in Rule 11. If the evidence of misconduct is clear and convincing and no informal resolution is achieved or is feasible, the chief judge must identify a complaint. A chief judge must not decline to identify a complaint merely because the person making the allegation has not filed a complaint under Rule 6. This Rule is subject to Rule 7.

(b) Noncompliance with Rule 6(d). Rule 6 complaints that do not comply with the requirements of Rule 6(d) must be considered under this Rule.

Commentary on Rule 5

This Rule is adapted from the Breyer Committee Report, 239 F.R.D. at 245-46.

The Act authorizes the chief judge, by written order stating reasons, to identify a complaint and thereby dispense with the filing of a written complaint. See 28 U.S.C. § 351(b). Under Rule 5, when a chief judge becomes aware of information constituting reasonable grounds to inquire into possible misconduct or disability on the part of a covered judge, and no formal complaint has been filed, the chief judge has the power in his or her discretion to begin an appropriate inquiry. A chief judge's decision whether to informally seek a resolution and/or to identify a complaint is guided by the results of that inquiry. If the chief judge concludes that there is probable cause to believe that misconduct has occurred or a disability exists, the chief judge may seek an informal resolution, if feasible, and if failing in that, may identify a complaint. Discretion is accorded largely for the reasons police officers and prosecutors have discretion in making arrests or bringing charges. The matter may be trivial and isolated, based on marginal evidence, or otherwise highly unlikely to lead to a misconduct or disability finding. On the other hand, if the inquiry leads the chief judge to conclude that there is clear and convincing evidence of misconduct or a disability, and no satisfactory informal resolution has been achieved or is feasible, the chief judge is required to identify a complaint.

An informal resolution is one agreed to by the subject judge and found satisfactory by the chief judge. Because an informal resolution under Rule 5 reached before a complaint is filed under Rule 6 will generally cause a subsequent Rule 6 complaint alleging the identical matter to be concluded, see Rule 11(d), the chief judge must be sure that the resolution is fully appropriate before endorsing it. In doing so, the chief judge must balance the seriousness of the matter against the particular judge's alacrity in addressing the issue. The availability of this procedure should encourage attempts at swift remedial action before a formal complaint is filed.

When a complaint is identified, a written order stating the reasons for the identification must be provided; this begins the process articulated in Rule 11. Rule 11 provides that once the chief judge has identified a complaint, the chief judge, subject to the disqualification provisions of Rule 25, will perform, with respect to that complaint, all functions assigned to the chief judge for the determination of complaints filed by a complainant.

In high-visibility situations, it may be desirable for the chief judge to identify a complaint without first seeking an informal resolution (and then, if the circumstances warrant, dismiss or conclude the identified complaint without appointment of a special committee) in order to assure the public that the allegations have not been ignored.

A chief judge's decision not to identify a complaint under Rule 5 is not appealable and is subject to Rule 3(h)(3)(A), which excludes merits-related complaints from the definition of misconduct.

A chief judge may not decline to identify a complaint solely on the basis that the unfiled allegations could be raised by one or more persons in a filed complaint, but none of these persons has opted to do so.

Subsection (a) concludes by stating that this Rule is "subject to Rule 7." This is intended to establish that only: (i) the chief judge of the home circuit of a potential subject judge, or

(ii) the chief judge of a circuit in which misconduct is alleged to have occurred in the course of official business while the potential subject judge was sitting by designation, shall have the power or a duty under this Rule to identify a complaint.

Subsection (b) provides that complaints filed under Rule 6 that do not comply with the requirements of Rule 6(d), must be considered under this Rule. For instance, if a complaint has been filed but the form submitted is unsigned, or the truth of the statements therein are not verified in writing under penalty of perjury, then a chief judge must nevertheless consider the allegations as known information, and proceed to follow the process described in Rule 5(a).

6. Filing a Complaint

(a) Form. A complainant may use the form reproduced in the appendix to these Rules or a form designated by the rules of the judicial council in the circuit in which the complaint is filed. A complaint form is also available on each court of appeals' website or may be obtained from the circuit clerk or any district court or bankruptcy court within the circuit. A form is not necessary to file a complaint, but the complaint must be written and must include the information described in (b).

(b) Brief Statement of Facts. A complaint must contain a concise statement that details the specific facts on which the claim of misconduct or disability is based. The statement of facts should include a description of:

- **(1) what happened;**
- **(2) when and where the relevant events happened;**
- **(3) any information that would help an investigator check the facts; and**
- **(4) for an allegation of disability, any additional facts that form the basis of that allegation.**

(c) Legibility. A complaint should be typewritten if possible. If not typewritten, it must be legible. An illegible complaint will be returned to the complainant with a request to resubmit it in legible form. If a resubmitted complaint is still illegible, it will not be accepted for filing.

(d) Complainant's Address and Signature; Verification. The complainant must provide a contact address and sign the complaint. The truth of the statements made in the complaint must be verified in writing under penalty of perjury. If any of these requirements are not met, the complaint will be accepted for filing, but it will be reviewed under only Rule 5(b).

(e) Number of Copies; Envelope Marking. The complainant shall provide the number of copies of the complaint required by local rule. Each copy should be in an envelope marked "Complaint of Misconduct" or "Complaint of Disability." The envelope must not show the name of any subject judge.

Commentary on Rule 6

The Rule is adapted from the Illustrative Rules and is self-explanatory.

7. Where to Initiate Complaints

(a) Where to File. Except as provided in (b),

- **(1) a complaint against a judge of a United States court of appeals, a United States district court, a United States bankruptcy court, or a United States**

magistrate judge must be filed with the circuit clerk in the jurisdiction in which the subject judge holds office.

(2) a complaint against a judge of the United States Court of International Trade or the United States Court of Federal Claims must be filed with the respective clerk of that court.

(3) a complaint against a judge of the United States Court of Appeals for the Federal Circuit must be filed with the circuit executive of that court.

(b) Misconduct in Another Circuit; Transfer. If a complaint alleges misconduct in the course of official business while the subject judge was sitting on a court by designation under 28 U.S.C. §§ 291–293 and 294(d), the complaint may be filed or identified with the circuit clerk of that circuit or of the subject judge's home circuit. The proceeding will continue in the circuit of the first-filed or first-identified complaint. The judicial council of the circuit where the complaint was first filed or first identified may transfer the complaint to the subject judge's home circuit or to the circuit where the alleged misconduct occurred, as the case may be.

Commentary on Rule 7

Title 28 U.S.C. § 351 states that complaints are to be filed with "the clerk of the court of appeals for the circuit." However, in many circuits, this role is filled by circuit executives. Accordingly, the term "circuit clerk," as defined in Rule 3(b) and used throughout these Rules, applies to circuit executives.

Section 351 uses the term "the circuit" in a way that suggests that either the home circuit of the subject judge or the circuit in which misconduct is alleged to have occurred is the proper venue for complaints. With an exception for judges sitting by designation, the Rule requires the identifying or filing of a misconduct or disability complaint in the circuit in which the judge holds office, largely based on the administrative perspective of the Act. Given the Act's emphasis on the future conduct of the business of the courts, the circuit in which the judge holds office is the appropriate forum because that circuit is likely best able to influence a judge's future behavior in constructive ways.

However, when judges sit by designation, the non-home circuit has a strong interest in redressing misconduct in the course of official business, and where allegations also involve a member of the bar -- ex parte contact between an attorney and a judge, for example -- it may often be desirable to have the judicial and bar misconduct proceedings take place in the same venue. Rule 7(b), therefore, allows transfer to, or filing or identification of a complaint in, the non-home circuit. The proceeding may be transferred by the judicial council of the filing or identified circuit to the other circuit.

8. Action by Clerk

(a) Receipt of Complaint. Upon receiving a complaint against a judge filed under Rule 5 or 6, the circuit clerk must open a file, assign a docket number according to a uniform numbering scheme promulgated by the Judicial Conference Committee on Judicial Conduct and Disability, and acknowledge the complaint's receipt.

(b) Distribution of Copies. The clerk must promptly send copies of a complaint filed under Rule 6 to the chief judge or the judge authorized to act as chief judge under Rule 25(f), and copies of complaints filed under Rule 5 or 6 to each subject judge. The clerk must retain the original complaint. Any further distribution should be as provided by local rule.

(c) Complaints Against Noncovered Persons. If the clerk receives a complaint about a person not holding an office described in Rule 4, the clerk must not accept the complaint for filing under these Rules.

(d) Receipt of Complaint about a Judge and Another Noncovered Person. If a complaint is received about a judge described in Rule 4 and a person not holding an office described in Rule 4, the clerk must accept the complaint for filing under these Rules only with regard to the judge and must inform the complainant of the limitation.

Commentary on Rule 8

This Rule is adapted from the Illustrative Rules and is largely self-explanatory.

The uniform docketing scheme described in subsection (a) should take into account potential problems associated with a complaint that names multiple judges. One solution may be to provide separate docket numbers for each subject judge. Separate docket numbers would help avoid difficulties in tracking cases, particularly if a complaint is dismissed with respect to some, but not all of the named judges.

Complaints against noncovered persons are not to be accepted for processing under these Rules but may, of course, be accepted under other circuit rules or procedures for grievances.

9. Time for Filing or Identifying a Complaint

A complaint may be filed or identified at any time. If the passage of time has made an accurate and fair investigation of a complaint impractical, the complaint must be dismissed under Rule 11(c)(1)(E).

Commentary on Rule 9

This Rule is adapted from the Act, 28 U.S.C. §§ 351, 352(b)(1)(A)(iii), and the Illustrative Rules.

10. Abuse of the Complaint Procedure

(a) Abusive Complaints. A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, a judicial council may prohibit, restrict, or impose conditions on the complainant's use of the complaint procedure. Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

(b) Orchestrated Complaints. When many essentially identical complaints from different complainants are received and appear to be part of an orchestrated

campaign, the chief judge may recommend that the judicial council issue a written order instructing the circuit clerk to accept only a certain number of such complaints for filing and to refuse to accept further ones. The clerk must send a copy of any such order to anyone whose complaint was not accepted.

Commentary on Rule 10

This Rule is adapted from the Illustrative Rules.

Rule 10(a) provides a mechanism for a judicial council to restrict the filing of further complaints by a single complainant who has abused the complaint procedure. In some instances, however, the complaint procedure may be abused in a manner for which the remedy provided in Rule 10(a) may not be appropriate. For example, some circuits have been inundated with submissions of dozens or hundreds of essentially identical complaints against the same judge or judges, all submitted by different complainants. In many of these instances, persons with grievances against a particular judge or judges used the Internet or other technology to orchestrate mass complaint-filing campaigns against them. If each complaint submitted as part of such a campaign were accepted for filing and processed according to these Rules, there would be a serious drain on court resources without any benefit to the adjudication of the underlying merits.

A judicial council may, therefore, respond to such mass filings under Rule 10(b) by declining to accept repetitive complaints for filing, regardless of the fact that the complaints are nominally submitted by different complainants. When the first complaint or complaints have been dismissed on the merits, and when further, essentially identical submissions follow, the judicial council may issue a second order noting that these are identical or repetitive complaints, directing the circuit clerk not to accept these complaints or any further such complaints for filing, and directing the clerk to send each putative complainant copies of both orders.

ARTICLE III. REVIEW OF A COMPLAINT BY THE CHIEF JUDGE

11. Review by the Chief Judge

(a) Purpose of Chief Judge's Review. When a complaint is identified by the chief judge or is filed, the chief judge must review it unless the chief judge is disqualified under Rule 25. If the complaint contains information constituting evidence of misconduct or disability, but the complainant does not claim it as such, the chief judge must treat the complaint as if it did allege misconduct or disability and give notice to the subject judge. After reviewing the complaint, the chief judge must determine whether it should be:

(1) dismissed;

(2) concluded on the ground that voluntary corrective action has been taken;

(3) concluded because intervening events have made action on the complaint no longer necessary; or

(4) referred to a special committee.

(b) Inquiry by Chief Judge. In determining what action to take under Rule 11(a), the chief judge may conduct a limited inquiry. The chief judge, or a designee, may communicate orally or in writing with the complainant, the subject judge, and any

others who may have knowledge of the matter, and may review transcripts or other relevant documents. In conducting the inquiry, the chief judge must not determine any reasonably disputed issue.

(c) Dismissal.

(1) Allowable grounds. A complaint must be dismissed in whole or in part to the extent that the chief judge concludes that the complaint:

(A) alleges conduct that, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts and does not indicate a mental or physical disability resulting in inability to discharge the duties of judicial office;

(B) is directly related to the merits of a decision or procedural ruling;

(C) is frivolous;

(D) is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists;

(E) is based on allegations which are incapable of being established through investigation;

(F) has been filed in the wrong circuit under Rule 7; or

(G) is otherwise not appropriate for consideration under the Act.

(2) Disallowed grounds. A complaint must not be dismissed solely because it repeats allegations of a previously dismissed complaint if it also contains material information not previously considered and does not constitute harassment of the subject judge.

(d) Corrective Action. The chief judge may conclude the complaint proceeding in whole or in part if:

(1) an informal resolution under Rule 5 satisfactory to the chief judge was reached before the complaint was filed under Rule 6, or

(2) the chief judge determines that the subject judge has taken appropriate voluntary corrective action that acknowledges and remedies the problems raised by the complaint.

(e) Intervening Events. The chief judge may conclude the complaint proceeding in whole or in part upon determining that intervening events render some or all of the allegations moot or make remedial action impossible.

(f) Appointment of Special Committee. If some or all of the complaint is not dismissed or concluded, the chief judge must promptly appoint a special committee to investigate the complaint or any relevant portion of it and to make recommendations to the judicial council. Before appointing a special committee, the chief judge must invite the subject judge to respond to the complaint either orally or in writing if the judge was not given an opportunity during the limited inquiry. In the chief judge's discretion, separate complaints may be joined and assigned to a single special committee. Similarly, a single complaint about more than one judge may be severed and more than one special committee appointed.

(g) Notice of Chief Judge's Action; Petitions for Review.

(1) When special committee is appointed. If a special committee is appointed, the chief judge must notify the complainant and the subject judge that the matter has been referred to a special committee and identify the members of the committee. A copy of the order appointing the special committee must be sent to the Judicial Conference Committee on Judicial Conduct and Disability.

(2) When chief judge disposes of complaint without appointing special committee. If the chief judge disposes of the complaint under Rule 11(c), (d), or (e), the chief judge must prepare a supporting memorandum that sets forth the reasons for the disposition. Except as authorized by 28 U.S.C. § 360, the memorandum must not include the name of the complainant or of the subject judge. The order and the supporting memorandum, which may be one document, must be provided to the complainant, the subject judge, and the Judicial Conference Committee on Judicial Conduct and Disability.

(3) Right of petition for review. If the chief judge disposes of a complaint under Rule 11(c), (d), or (e), the complainant and subject judge must be notified of the right to petition the judicial council for review of the disposition, as provided in Rule 18. If a petition for review is filed, the chief judge must promptly transmit all materials obtained in connection with the inquiry under Rule 11(b) to the circuit clerk for transmittal to the judicial council.

(h) Public Availability of Chief Judge's Decision. The chief judge's decision must be made public to the extent, at the time, and in the manner provided in Rule 24.

Commentary on Rule 11

Subsection (a) lists the actions available to a chief judge in reviewing a complaint. This subsection provides that where a complaint has been filed under Rule 6, the ordinary doctrines of waiver do not apply. A chief judge must identify as a complaint any misconduct or disability issues raised by the factual allegations of the complaint even if the complainant makes no such claim with regard to those issues. For example, an allegation limited to misconduct in fact-finding that mentions periods during a trial when the judge was asleep must be treated as a complaint regarding disability. Some formal order giving notice of the expanded scope of the proceeding must be given to the subject judge.

Subsection (b) describes the nature of the chief judge's inquiry. It is based largely on the Breyer Committee Report, 239 F.R.D. at 243-45. The Act states that dismissal is appropriate "when a limited inquiry . . . demonstrates that the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence." 28 U.S.C. § 352(b)(1)(B). At the same time, however, Section 352(a) states that "[t]he chief judge shall not undertake to make findings of fact about any matter that is reasonably in dispute." These two statutory standards should be read together, so that a matter is not "reasonably" in dispute if a limited inquiry shows that the allegations do not constitute misconduct or disability, that they lack any reliable factual foundation, or that they are conclusively refuted by objective evidence.

In conducting a limited inquiry under subsection (b), the chief judge must avoid determinations of reasonably disputed issues, including reasonably disputed issues as to whether the facts alleged constitute misconduct or disability, which are ordinarily left to a special committee and the judicial council. An allegation of fact is ordinarily not "refuted" simply because the subject judge denies it. The limited inquiry must reveal something more in the way of refutation before it is appropriate to dismiss a complaint that is otherwise cognizable. If it is the complainant's word against the subject judge's -- in other words, there is simply no other significant evidence of what happened or of the complainant's unreliability -- then there must be a special-committee investigation. Such a credibility issue is a matter "reasonably in dispute" within the meaning of the Act.

However, dismissal following a limited inquiry may occur when the complaint refers to transcripts or to witnesses and the chief judge determines that the transcripts and witnesses all support the subject judge. Breyer Committee Report, 239 F.R.D. at 243. For example, consider a complaint alleging that the subject judge said X, and the complaint mentions, or it is independently clear, that five people may have heard what the judge said. Id. The chief judge is told by the subject judge and one witness that the judge did not say X, and the chief judge dismisses the complaint without questioning the other four possible witnesses. Id. In this example, the matter remains reasonably in dispute. If all five witnesses say the judge did not say X, dismissal is appropriate, but if potential witnesses who are reasonably accessible have not been questioned, then the matter remains reasonably in dispute. Id.

Similarly, under (c)(1)(A), if it is clear that the conduct or disability alleged, even if true, is not cognizable under these Rules, the complaint should be dismissed. If that issue is reasonably in dispute, however, dismissal under (c)(1)(A) is inappropriate.

Essentially, the standard articulated in subsection (b) is that used to decide motions for summary judgment pursuant to Fed. R. Civ. P. 56. Genuine issues of material fact are not resolved at the summary judgment stage. A material fact is one that "might affect the outcome of the suit under the governing law," and a dispute is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, 477 U.S. 242, 248 (1986). Similarly, the chief judge may not resolve a genuine issue concerning a material fact or the existence of misconduct or a disability when conducting a limited inquiry pursuant to subsection (b).

Subsection (c) describes the grounds on which a complaint may be dismissed. These are adapted from the Act, 28 U.S.C. § 352(b), and the Breyer Committee Report, 239 F.R.D. at 239-45. Subsection (c)(1)(A) permits dismissal of an allegation that, even if true, does not constitute misconduct or disability under the statutory standard. The proper standards are set out in Rule 3 and discussed in the Commentary on that Rule. Subsection (c)(1)(B) permits dismissal of complaints related to the merits of a decision by a subject judge; this standard is also governed by Rule 3 and its accompanying Commentary.

Subsections (c)(1)(C)-(E) implement the statute by allowing dismissal of complaints that are "frivolous, lacking sufficient evidence to raise an inference that misconduct has occurred, or containing allegations which are incapable of being established through investigation." 28 U.S.C. § 352(b)(1)(A)(iii).

Dismissal of a complaint as "frivolous," under Rule 11(c)(1)(C), will generally occur without any inquiry beyond the face of the complaint. For instance, when the allegations are facially incredible or so lacking in indicia of reliability that no further inquiry is warranted, dismissal under this subsection is appropriate.

A complaint warranting dismissal under Rule 11(c)(1)(D) is illustrated by the following example. Consider a complainant who alleges an impropriety and asserts that he knows of it because it was observed and reported to him by a person who is identified. The judge denies that the event occurred. When contacted, the source also denies it. In such a case, the chief judge's proper course of action may turn on whether the source had any role in the allegedly improper conduct. If the complaint was based on a lawyer's statement that he or she had an improper ex parte contact with a judge, the lawyer's denial of the impropriety might not be taken as wholly

persuasive, and it would be appropriate to conclude that a real factual issue is raised. On the other hand, if the complaint quoted a disinterested third party and that disinterested party denied that the statement had been made, there would be no value in opening a formal investigation. In such a case, it would be appropriate to dismiss the complaint under Rule 11(c)(1)(D).

Rule 11(c)(1)(E) is intended, among other things, to cover situations when no evidence is offered or identified, or when the only identified source is unavailable. Breyer Committee Report, 239 F.R.D. at 243. For example, a complaint alleges that an unnamed attorney told the complainant that the judge did X. Id. The subject judge denies it. The chief judge requests that the complainant (who does not purport to have observed the judge do X) identify the unnamed witness, or that the unnamed witness come forward so that the chief judge can learn the unnamed witness's account. Id. The complainant responds that he has spoken with the unnamed witness, that the unnamed witness is an attorney who practices in federal court, and that the unnamed witness is unwilling to be identified or to come forward. Id. at 243-44. The allegation is then properly dismissed as containing allegations that are incapable of being established through investigation. Id.

If, however, the situation involves a reasonable dispute over credibility, the matter should proceed. For example, the complainant alleges an impropriety and alleges that he or she observed it and that there were no other witnesses; the subject judge denies that the event occurred. Unless the complainant's allegations are facially incredible or so lacking indicia of reliability warranting dismissal under Rule 11(c)(1)(C), a special committee must be appointed because there is a material factual question that is reasonably in dispute.

Dismissal is also appropriate when a complaint is filed so long after an alleged event that memory loss, death, or changes to unknown residences prevent a proper investigation.

Subsection (c)(2) indicates that the investigative nature of the process prevents the application of claim preclusion principles where new and material evidence becomes available. However, it also recognizes that at some point a renewed investigation may constitute harassment of the subject judge and should be foregone, depending of course on the seriousness of the issues and the weight of the new evidence.

Rule 11(d) implements the Act's provision for dismissal if voluntary appropriate corrective action has been taken. It is largely adapted from the Breyer Committee Report, 239 F.R.D. 244-45. The Act authorizes the chief judge to conclude the proceedings if "appropriate corrective action has been taken." 28 U.S.C. § 352(b)(2). Under the Rule, action taken after the complaint is filed is "appropriate" when it acknowledges and remedies the problem raised by the complaint. Breyer Committee Report, 239 F.R.D. at 244. Because the Act deals with the conduct of judges, the emphasis is on correction of the judicial conduct that was the subject of the complaint. Id. Terminating a complaint based on corrective action is premised on the implicit understanding that voluntary self-correction or redress of misconduct or a disability is preferable to sanctions. Id. The chief judge may facilitate this process by giving the subject judge an objective view of the appearance of the judicial conduct in question and by suggesting appropriate corrective measures. Id. Moreover, when corrective action is taken under Rule 5 satisfactory to the chief judge before a complaint is filed, that informal resolution will be sufficient to conclude a subsequent complaint based on the identical conduct.

"Corrective action" must be voluntary action taken by the subject judge. Breyer Committee Report, 239 F.R.D. at 244. A remedial action directed by the chief judge or by an appellate court without the participation of the subject judge in formulating the directive or without the subject judge's subsequent agreement to such action does not constitute the requisite voluntary corrective action. Id. Neither the chief judge nor an appellate court has authority under the Act to impose a formal remedy or sanction; only the judicial council can impose a formal remedy or sanction under 28 U.S.C. § 354(a)(2). Id. Compliance with a previous council order may serve as corrective action allowing conclusion of a later complaint about the same behavior. Id.

Where a judge's conduct has resulted in identifiable, particularized harm to the complainant or another individual, appropriate corrective action should include steps taken by that judge to acknowledge and redress the harm, if possible, such as by an apology, recusal from a case, or a pledge to refrain from similar conduct in the future. Id. While the Act is generally forward-looking, any corrective action should, to the extent possible, serve to correct a specific harm to an individual, if such harm can reasonably be remedied. Id. In some cases, corrective action may not be "appropriate" to justify conclusion of a complaint unless the complainant or other individual harmed is meaningfully apprised of the nature of the corrective action in the chief judge's order, in a direct communication from the subject judge, or otherwise. Id.

Voluntary corrective action should be proportionate to any plausible allegations of misconduct in the complaint. The form of corrective action should also be proportionate to any sanctions that a judicial council might impose under Rule 20(b), such as a private or public reprimand or a change in case assignments. Breyer Committee Report, 239 F.R.D at 244-45. In other words, minor corrective action will not suffice to dispose of a serious matter. Id.

Rule 11(e) implements Section 352(b)(2) of the Act, which permits the chief judge to "conclude the proceeding," if "action on the complaint is no longer necessary because of intervening events," such as a resignation from judicial office. Ordinarily, however, stepping down from an administrative post such as chief judge, judicial-council member, or court-committee chair does not constitute an event rendering unnecessary any further action on a complaint alleging judicial misconduct. Breyer Committee Report, 239 F.R.D. at 245. As long as the subject of the complaint performs judicial duties, a complaint alleging judicial misconduct must be addressed. Id.

If a complaint is not disposed of pursuant to Rule 11(c), (d), or (e), a special committee must be appointed. Rule 11(f) states that a subject judge must be invited to respond to the complaint before a special committee is appointed, if no earlier response was invited.

Subject judges, of course, receive copies of complaints at the same time that they are referred to the chief judge, and they are free to volunteer responses to them. Under Rule 11(b), the chief judge may request a response if it is thought necessary. However, many complaints are clear candidates for dismissal even if their allegations are accepted as true, and there is no need for the subject judge to devote time to a defense.

The Act requires that the order dismissing a complaint or concluding the proceeding contain a statement of reasons and that a copy of the order be sent to the complainant. 28 U.S.C. § 352(b). Rule 24, dealing with availability of information to the public, contemplates that the order will be made public, usually without disclosing the names of the complainant or the subject

judge. If desired for administrative purposes, more identifying information can be included in a non-public version of the order.

When complaints are disposed of by chief judges, the statutory purposes are best served by providing the complainant with a full, particularized, but concise explanation, giving reasons for the conclusions reached. See also Commentary on Rule 24, dealing with public availability.

Rule 11(g) provides that the complainant and subject judge must be notified, in the case of a disposition by the chief judge, of the right to petition the judicial council for review. A copy of a chief judge's order and memorandum, which may be one document, disposing of a complaint must be sent by the circuit clerk to the Judicial Conference Committee on Judicial Conduct and Disability.

ARTICLE IV. INVESTIGATION AND REPORT BY SPECIAL COMMITTEE

12. Composition of Special Committee

(a) Membership. Except as provided in (e), a special committee appointed under Rule 11(f) must consist of the chief judge and equal numbers of circuit and district judges. If the complaint is about a district judge, bankruptcy judge, or magistrate judge, then, when possible, the district-judge members of the committee must be from districts other than the district of the subject judge. For the courts named in 28 U.S.C. § 363, the committee must be selected from the judges serving on the subject judge's court.

(b) Presiding Officer. When appointing the committee, the chief judge may serve as the presiding officer or else must designate a committee member as the presiding officer.

(c) Bankruptcy Judge or Magistrate Judge as Adviser. If the subject judge is a bankruptcy judge or magistrate judge, he or she may, within 14 days after being notified of the committee's appointment, ask the chief judge to designate as a committee adviser another bankruptcy judge or magistrate judge, as the case may be. The chief judge must grant such a request but may otherwise use discretion in naming the adviser. Unless the adviser is a Court of Federal Claims special master appointed under 42 U.S.C. § 300aa-12(c), the adviser must be from a district other than the district of the subject bankruptcy judge or subject magistrate judge. The adviser cannot vote but has the other privileges of a committee member.

(d) Provision of Documents. The chief judge must certify to each other member of the committee and to any adviser copies of the complaint and statement of facts in whole or relevant part, and any other relevant documents on file.

(e) Continuing Qualification of Committee Members. A member of a special committee who was qualified to serve when appointed may continue to serve on the committee even though the member relinquishes the position of chief judge, active circuit judge, or active district judge, as the case may be, but only if the member continues to hold office under Article III, Section 1, of the Constitution of the United States, or under 28 U.S.C. § 171.

(f) Inability of Committee Member to Complete Service. If a member of a special committee can no longer serve because of death, disability, disqualification, resignation, retirement from office, or other reason, the chief judge must decide whether to appoint a replacement member, either a circuit or district judge as needed under (a). No special committee appointed under these Rules may function with only a single member, and the votes of a two-member committee must be unanimous.

(g) Voting. All actions by a committee must be by vote of a majority of all members of the committee.

Commentary on Rule 12

This Rule is adapted from the Act and the Illustrative Rules.

Rule 12 leaves the size of a special committee flexible, to be determined on a case-by-case basis. The question of committee size is one that should be weighed with care in

view of the potential for consuming the members' time; a large committee should be appointed only if there is a special reason to do so.

Although the Act requires that the chief judge be a member of each special committee, 28 U.S.C. § 353(a)(1), it does not require that the chief judge preside. Accordingly, Rule 12(b) provides that if the chief judge does not preside, he or she must designate another committee member as the presiding officer.

Rule 12(c) provides that the chief judge must appoint a bankruptcy judge or magistrate judge as an adviser to a special committee at the request of a bankruptcy or magistrate subject judge.

Subsection (c) also provides that the adviser will have all the privileges of a committee member except a vote. The adviser, therefore, may participate in all deliberations of the committee, question witnesses at hearings, and write a separate statement to accompany the special committee's report to the judicial council.

Rule 12(e) provides that a member of a special committee who remains an Article III judge may continue to serve on the committee even though the member's status otherwise changes. Thus, a committee that originally consisted of the chief judge and an equal number of circuit and district judges, as required by the law, may continue to function even though changes of status alter that composition. This provision reflects the belief that stability of membership will contribute to the quality of the work of such committees.

Stability of membership is also the principal concern animating Rule 12(f), which deals with the case in which a special committee loses a member before its work is complete. The Rule permits the chief judge to determine whether a replacement member should be appointed. Generally, appointment of a replacement member is desirable in these situations unless the committee has conducted evidentiary hearings before the vacancy occurs. However, cases may arise in which a committee is in the late stages of its work, and in which it would be difficult for a new member to play a meaningful role. The Rule also preserves the collegial character of the committee process by prohibiting a single surviving member from serving as a committee and by providing that a committee of two surviving members will, in essence, operate under a unanimity rule.

Rule 12(g) provides that actions of a special committee must be by vote of a majority of all the members. All the members of a committee should participate in committee decisions. In that circumstance, it seems reasonable to require that committee decisions be made by a majority of the membership, rather than a majority of some smaller quorum.

13. Conduct of an Investigation

(a) Extent and Methods of Special-Committee Investigation. Each special committee must determine the appropriate extent and methods of the investigation in light of the allegations of the complaint. If, in the course of the investigation, the committee has cause to believe that the subject judge may have engaged in misconduct or has a disability that is beyond the scope of the complaint, the committee must refer the new matter to the chief judge for action under Rule 5 or Rule 11.

(b) Criminal Conduct. If the committee's investigation concerns conduct that may be a crime, the committee must consult with the appropriate prosecutorial authorities to

the extent permitted by the Act to avoid compromising any criminal investigation. The committee has final authority over the timing and extent of its investigation and the formulation of its recommendations.

(c) Staff. The committee may arrange for staff assistance to conduct the investigation. It may use existing staff of the judicial branch or may hire special staff through the Director of the Administrative Office of the United States Courts.

(d) Delegation of Subpoena Power; Contempt. The chief judge may delegate the authority to exercise the committee's subpoena powers. The judicial council or special committee may institute a contempt proceeding under 28 U.S.C. § 332(d) against anyone who fails to comply with a subpoena.

Commentary on Rule 13

This Rule is adapted from the Illustrative Rules.

Rule 13, as well as Rules 14, 15, and 16, are concerned with the way in which a special committee carries out its mission. They reflect the view that a special committee has two roles that are separated in ordinary litigation. First, the committee has an investigative role of the kind that is characteristically left to executive branch agencies or discovery by civil litigants. 28 U.S.C. § 353(c). Second, it has a formalized fact-finding and recommendation-of-disposition role that is characteristically left to juries, judges, or arbitrators. Id. Rule 13 generally governs the investigative stage. Even though the same body has responsibility for both roles under the Act, it is important to distinguish between them in order to ensure that appropriate rights are afforded at appropriate times to the subject judge.

One of the difficult questions that can arise is the relationship between proceedings under the Act and criminal investigations. Rule 13(b) assigns responsibility for coordination to the special committee in cases in which criminal conduct is suspected, but gives the committee the authority to determine the appropriate pace of its activity in light of any criminal investigation.

Title 28 U.S.C. § 356(a) provides that a special committee will have full subpoena powers as provided in 28 U.S.C. § 332(d). Section 332(d)(1) provides that subpoenas will be issued on behalf of judicial councils by the circuit clerk "at the direction of the chief judge of the circuit or his designee." Rule 13(d) contemplates that, where the chief judge designates someone else as presiding officer of a special committee, the presiding officer also be delegated the authority to direct the circuit clerk to issue subpoenas related to committee proceedings. That is not intended to imply, however, that the decision to use the subpoena power is exercisable by the presiding officer alone. See Rule 12(g).

14. Conduct of Hearings by Special Committee

(a) Purpose of Hearings. The committee may hold hearings to take testimony and receive other evidence, to hear argument, or both. If the committee is investigating allegations against more than one judge, it may hold joint or separate hearings.

(b) Committee Evidence. Subject to Rule 15, the committee must obtain material, nonredundant evidence in the form it considers appropriate. In the committee's discretion, evidence may be obtained by committee members, staff, or both. Witnesses offering testimonial evidence may include the complainant and the subject judge.

(c) **Counsel for Witnesses. The subject judge has the right to counsel. The special committee has discretion to decide whether other witnesses may have counsel present when they testify.**
(d) **Witness Fees. Witness fees must be paid as provided in 28 U.S.C. § 1821.**
(e) **Oath. All testimony taken at a hearing must be given under oath or affirmation.**
(f) **Rules of Evidence. The Federal Rules of Evidence do not apply to special-committee hearings.**
(g) **Record and Transcript. A record and transcript must be made of all hearings.**

Commentary on Rule 14

This Rule is adapted from Section 353 of the Act and the Illustrative Rules.

Rule 14 is concerned with the conduct of fact-finding hearings. Special-committee hearings will normally be held only after the investigative work has been completed and the committee has concluded that there is sufficient evidence to warrant a formal fact-finding proceeding. Special-committee proceedings are primarily inquisitorial rather than adversarial. Accordingly, the Federal Rules of Evidence do not apply to such hearings. Inevitably, a hearing will have something of an adversary character. Nevertheless, that tendency should be moderated to the extent possible. Even though a proceeding will commonly have investigative and hearing stages, committee members should not regard themselves as prosecutors one day and judges the next. Their duty -- and that of their staff -- is at all times to be impartial seekers of the truth.

Rule 14(b) contemplates that material evidence will be obtained by the committee and presented in the form of affidavits, live testimony, etc. Staff or others who are organizing the hearings should regard it as their role to present evidence representing the entire picture. With respect to testimonial evidence, the subject judge should normally be called as a committee witness. Cases may arise in which the judge will not testify voluntarily. In such cases, subpoena powers are available, subject to the normal testimonial privileges. Although Rule 15(c) recognizes the subject judge's statutory right to call witnesses on his or her own behalf, exercise of this right should not usually be necessary.

15. Rights of Subject Judge

(a) **Notice.**
  (1) **Generally. The subject judge must receive written notice of:**
    (A) **the appointment of a special committee under Rule 11(f);**
    (B) **the expansion of the scope of an investigation under Rule 13(a);**
    (C) **any hearing under Rule 14, including its purposes, the names of any witnesses the committee intends to call, and the text of any statements that have been taken from those witnesses.**
  (2) **Suggestion of additional witnesses. The subject judge may suggest additional witnesses to the committee.**
(b) **Report of the Special Committee. The subject judge must be sent a copy of the special committee's report when it is filed with the judicial council.**
(c) **Presentation of Evidence. At any hearing held under Rule 14, the subject judge has the right to present evidence, to compel the attendance of witnesses, and to compel the production of documents. At the request of the subject judge, the chief judge or the judge's designee must direct the circuit clerk to issue a subpoena to a witness**

under 28 U.S.C. § 332(d)(1). The subject judge must be given the opportunity to cross-examine committee witnesses, in person or by counsel.

(d) Presentation of Argument. The subject judge may submit written argument to the special committee and must be given a reasonable opportunity to present oral argument at an appropriate stage of the investigation.

(e) Attendance at Hearings. The subject judge has the right to attend any hearing held under Rule 14 and to receive copies of the transcript, of any documents introduced, and of any written arguments submitted by the complainant to the committee.

(f) Representation by Counsel. The subject judge may choose to be represented by counsel in the exercise of any right enumerated in this Rule. As provided in Rule 20(e), the United States may bear the costs of the representation.

Commentary on Rule 15

This Rule is adapted from the Act and the Illustrative Rules.

The Act states that these Rules must contain provisions requiring that "the judge whose conduct is the subject of a complaint . . . be afforded an opportunity to appear (in person or by counsel) at proceedings conducted by the investigating panel, to present oral and documentary evidence, to compel the attendance of witnesses or the production of documents, to cross-examine witnesses, and to present argument orally or in writing." 28 U.S.C. § 358(b)(2). To implement this provision, Rule 15(e) gives the judge the right to attend any hearing held for the purpose of receiving evidence of record or hearing argument under Rule 14.

The Act does not require that the subject judge be permitted to attend all proceedings of the special committee. Accordingly, the Rules do not give a right to attend other proceedings -- for example, meetings at which the committee is engaged in investigative activity, such as interviewing persons to learn whether they ought to be called as witnesses or examining for relevance purposes documents delivered pursuant to a subpoena duces tecum, or meetings in which the committee is deliberating on the evidence or its recommendations.

16. Rights of Complainant in Investigation

(a) Notice. The complainant must receive written notice of the investigation as provided in Rule 11(g)(1). When the special committee's report to the judicial council is filed, the complainant must be notified of the filing. The judicial council may, in its discretion, provide a copy of the report of a special committee to the complainant.

(b) Opportunity to Provide Evidence. If the committee determines that the complainant may have evidence that does not already exist in writing, a representative of the committee must interview the complainant.

(c) Presentation of Argument. The complainant may submit written argument to the special committee. In its discretion, the special committee may permit the complainant to offer oral argument.

(d) Representation by Counsel. A complainant may submit written argument through counsel and, if permitted to offer oral argument, may do so through counsel.

(e) Cooperation. In exercising its discretion under this Rule, a special committee may take into account the degree of the complainant's cooperation in preserving the confidentiality of the proceedings, including the identity of the subject judge.

Commentary on Rule 16

This Rule is adapted from the Act and the Illustrative Rules.

In accordance with the view of the process as fundamentally administrative and inquisitorial, these Rules do not give the complainant the rights of a party to litigation, and leave the complainant's role largely to the discretion of the special committee. However, Rule 16(b) provides that, where a special committee has been appointed and it determines that the complainant may have additional evidence, the complainant must be interviewed by a representative of the committee. Such an interview may be in person or by telephone, and the representative of the committee may be either a member or staff.

Rule 16 does not contemplate that the complainant will ordinarily be permitted to attend proceedings of the special committee except when testifying or presenting oral argument. A special committee may exercise its discretion to permit the complainant to be present at its proceedings, or to permit the complainant, individually or through counsel, to participate in the examination or cross-examination of witnesses.

The Act authorizes an exception to the normal confidentiality provisions where the judicial council in its discretion provides a copy of the report of the special committee to the complainant and to the subject judge. 28 U.S.C. § 360(a)(1). However, the Rules do not entitle the complainant to a copy of the special committee's report.

In exercising their discretion regarding the role of the complainant, the special committee and the judicial council should protect the confidentiality of the complaint process. As a consequence, subsection (e) provides that a special committee may consider the degree to which a complainant has cooperated in preserving the confidentiality of the proceedings in determining what role beyond the minimum required by these Rules should be given to that complainant.

17. Special-Committee Report

The committee must file with the judicial council a comprehensive report of its investigation, including findings and recommendations for council action. The report must be accompanied by a statement of the vote by which it was adopted, any separate or dissenting statements of committee members, and the record of any hearings held under Rule 14. A copy of the report and accompanying statement must be sent to the Judicial Conference Committee on Judicial Conduct and Disability.

Commentary on Rule 17

This Rule is adapted from the Illustrative Rules and is self-explanatory. The provision for sending a copy of the special-committee report and accompanying statement to the Judicial Conference Committee is new.

ARTICLE V. JUDICIAL-COUNCIL REVIEW

18. Petitions for Review of Chief Judge Dispositions Under Rule 11(c), (d), or (e)

(a) **Petitions for Review.** After the chief judge issues an order under Rule 11(c), (d), or (e), a complainant or subject judge may petition the judicial council of the circuit to review the order. By rules promulgated under 28 U.S.C. § 358, the judicial council may refer a petition for review filed under this Rule to a panel of no fewer than five members of the council, at least two of whom must be district judges.

(b) **When to File; Form; Where to File.** A petition for review must be filed in the office of the circuit clerk within 35 days of the date on the clerk's letter informing the parties of the chief judge's order. The petition should be in letter form, addressed to the circuit clerk, and in an envelope marked "Misconduct Petition" or "Disability Petition." The name of the subject judge must not be shown on the envelope. The letter should be typewritten or otherwise legible. It should begin with "I hereby petition the judicial council for review of . . . " and state the reasons why the petition should be granted. It must be signed.

(c) **Receipt and Distribution of Petition.** A circuit clerk who receives a petition for review filed within the time allowed and in proper form must:

- (1) acknowledge its receipt and send a copy to the complainant or subject judge, as the case may be;
- (2) promptly distribute to each member of the judicial council, or its relevant panel, except for any member disqualified under Rule 25, or make available in the manner provided by local rule, the following materials:
  - (A) copies of the complaint;
  - (B) all materials obtained by the chief judge in connection with the inquiry;
  - (C) the chief judge's order disposing of the complaint;
  - (D) any memorandum in support of the chief judge's order;
  - (E) the petition for review; and
  - (F) an appropriate ballot;
- (3) send the petition for review to the Judicial Conference Committee on Judicial Conduct and Disability. Unless the Judicial Conference Committee requests them, the clerk will not send copies of the materials obtained by the chief judge.

(d) **Untimely Petition.** The clerk must refuse to accept a petition that is received after the deadline in (b).

(e) **Timely Petition Not in Proper Form.** When the clerk receives a petition filed within the time allowed but in a form that is improper to a degree that would substantially impair its consideration by the judicial council — such as a document that is ambiguous about whether it is intended to be a petition for review — the clerk must acknowledge its receipt, call the filer's attention to the deficiencies, and give the filer the opportunity to correct the deficiencies within 21 days of the date of the clerk's letter about the deficiencies or within the original deadline for filing the petition, whichever is later. If the deficiencies are corrected within the time allowed, the clerk will proceed according to paragraphs (a) and (c) of this Rule. If the deficiencies are not corrected, the clerk must reject the petition.

Commentary on Rule 18

Rule 18 is adapted largely from the Illustrative Rules.

Subsection (a) permits a subject judge, as well as the complainant, to petition for review of a chief judge's order dismissing a complaint under Rule 11(c), or concluding that appropriate corrective action or intervening events have remedied or mooted the problems raised by the complaint pursuant to Rule 11(d) or (e). Although the subject judge may ostensibly be vindicated by the dismissal or conclusion of a complaint, a chief judge's order may include language disagreeable to the subject judge. For example, an order may dismiss a complaint, but state that the subject judge did in fact engage in misconduct. Accordingly, a subject judge may wish to object to the content of the order and is given the opportunity to petition the judicial council of the circuit for review.

Subsection (b) contains a time limit of thirty-five days to file a petition for review. It is important to establish a time limit on petitions for review of chief judges' dispositions in order to provide finality to the process. If the complaint requires an investigation, the investigation should proceed; if it does not, the subject judge should know that the matter is closed.

The standards for timely filing under the Federal Rules of Appellate Procedure should be applied to petitions for review. See Fed. R. App. P. 25(a)(2)(A) and (C).

Rule 18(e) provides for an automatic extension of the time limit imposed under subsection (b) if a person files a petition that is rejected for failure to comply with formal requirements.

19. Judicial-Council Disposition of Petitions for Review

(a) Rights of Subject Judge. At any time after a complainant files a petition for review, the subject judge may file a written response with the circuit clerk. The clerk must promptly distribute copies of the response to each member of the judicial council or of the relevant panel, unless that member is disqualified under Rule 25. Copies must also be distributed to the chief judge, to the complainant, and to the Judicial Conference Committee on Judicial Conduct and Disability. The subject judge must not otherwise communicate with individual council members about the matter. The subject judge must be given copies of any communications to the judicial council from the complainant.

(b) Judicial-Council Action. After considering a petition for review and the materials before it, a judicial council may:

- **(1) affirm the chief judge's disposition by denying the petition;**
- **(2) return the matter to the chief judge with directions to conduct a further inquiry under Rule 11(b) or to identify a complaint under Rule 5;**
- **(3) return the matter to the chief judge with directions to appoint a special committee under Rule 11(f); or**
- **(4) in exceptional circumstances, take other appropriate action.**

(c) Notice of Council Decision. Copies of the judicial council's order, together with any accompanying memorandum in support of the order or separate concurring or dissenting statements, must be given to the complainant, the subject judge, and the Judicial Conference Committee on Judicial Conduct and Disability.

(d) Memorandum of Council Decision. If the council's order affirms the chief judge's disposition, a supporting memorandum must be prepared only if the judicial council concludes that there is a need to supplement the chief judge's explanation. A memorandum supporting a council order must not include the name of the complainant or the subject judge.

(e) Review of Judicial-Council Decision. If the judicial council's decision is adverse to the petitioner, and if no member of the council dissented on the ground that a special committee should be appointed under Rule 11(f), the complainant must be notified that he or she has no right to seek review of the decision. If there was a dissent, the petitioner must be informed that he or she can file a petition for review under Rule 21(b) solely on the issue of whether a special committee should be appointed.

(f) Public Availability of Judicial-Council Decision. Materials related to the council's decision must be made public to the extent, at the time, and in the manner set forth in Rule 24.

Commentary on Rule 19

This Rule is largely adapted from the Act and is self-explanatory.

The council should ordinarily review the decision of the chief judge on the merits, treating the petition for review for all practical purposes as an appeal. The judicial council may respond to a petition by affirming the chief judge's order, remanding the matter, or, in exceptional cases, taking other appropriate action.

20. Judicial-Council Consideration of Reports and Recommendations of Special Committees

(a) Rights of Subject Judge. Within 21 days after the filing of the report of a special committee, the subject judge may send a written response to the members of the judicial council. The judge must also be given an opportunity to present argument through counsel, written or oral, as determined by the council. The judge must not otherwise communicate with council members about the matter.

(b) Judicial-Council Action.

(1) Discretionary actions. Subject to the judge's rights set forth in subsection (a), the judicial council may:

(A) dismiss the complaint because:

(i) even if the claim is true, the claimed conduct is not conduct prejudicial to the effective and expeditious administration of the business of the courts and does not indicate a mental or physical disability resulting in inability to discharge the duties of office;

(ii) the complaint is directly related to the merits of a decision or procedural ruling;

(iii) the facts on which the complaint is based have not been established; or

(iv) the complaint is otherwise not appropriate for consideration under 28 U.S.C. §§ 351–364.

(B) conclude the proceeding because appropriate corrective action has been taken or intervening events have made the proceeding unnecessary.

(C) refer the complaint to the Judicial Conference of the United States with the council's recommendations for action.

(D) take remedial action to ensure the effective and expeditious administration of the business of the courts, including:

(i) censuring or reprimanding the subject judge, either by private communication or by public announcement;

(ii) ordering that no new cases be assigned to the subject judge for a limited, fixed period;

(iii) in the case of a magistrate judge, ordering the chief judge of the district court to take action specified by the council, including the initiation of removal proceedings under 28 U.S.C. § 631(i) or 42 U.S.C. § 300aa–12(c)(2);

(iv) in the case of a bankruptcy judge, removing the judge from office under 28 U.S.C. § 152(e);

(v) in the case of a circuit or district judge, requesting the judge to retire voluntarily with the provision (if necessary) that ordinary length-of-service requirements will be waived; and

(vi) in the case of a circuit or district judge who is eligible to retire but does not do so, certifying the disability of the judge under 28 U.S.C. § 372(b) so that an additional judge may be appointed.

(E) take any combination of actions described in (b)(1)(A)–(D) of this Rule that is within its power.

(2) Mandatory actions. A judicial council must refer a complaint to the Judicial Conference if the council determines that a circuit judge or district judge may have engaged in conduct that:

(A) might constitute ground for impeachment; or

(B) in the interest of justice, is not amenable to resolution by the judicial council.

(c) Inadequate Basis for Decision. If the judicial council finds that a special committee's report, recommendations, and record provide an inadequate basis for decision, it may return the matter to the committee for further investigation and a new report, or it may conduct further investigation. If the judicial council decides to conduct further investigation, the subject judge must be given adequate prior notice in writing of that decision and of the general scope and purpose of the additional investigation. The judicial council's conduct of the additional investigation must generally accord with the procedures and powers set forth in Rules 13 through 16 for the conduct of an investigation by a special committee.

(d) Council Vote. Council action must be taken by a majority of those members of the council who are not disqualified. A decision to remove a bankruptcy judge from office requires a majority vote of all the members of the council.

(e) Recommendation for Fee Reimbursement. If the complaint has been finally dismissed or concluded under (b)(1)(A) or (B) of this Rule, and if the subject judge so requests, the judicial council may recommend that the Director of the Administrative Office of the United States Courts use funds appropriated to the Judiciary to reimburse the judge for reasonable expenses incurred during the

investigation, when those expenses would not have been incurred but for the requirements of the Act and these Rules. Reasonable expenses include attorneys' fees and expenses related to a successful defense or prosecution of a proceeding under Rule 21(a) or (b).

(f) Council Action. Council action must be by written order. Unless the council finds that extraordinary reasons would make it contrary to the interests of justice, the order must be accompanied by a memorandum setting forth the factual determinations on which it is based and the reasons for the council action. The order and the supporting memorandum must be provided to the complainant, the subject judge, and the Judicial Conference Committee on Judicial Conduct and Disability. The complainant and the subject judge must be notified of any right to review of the judicial council's decision as provided in Rule 21(b).

Commentary on Rule 20

This Rule is largely adapted from the Illustrative Rules.

Rule 20(a) provides that within twenty-one days after the filing of the report of a special committee, the subject judge may address a written response to all of the members of the judicial council. The subject judge must also be given an opportunity to present oral argument to the council, personally or through counsel. The subject judge may not otherwise communicate with council members about the matter.

Rule 20(c) provides that if the judicial council decides to conduct an additional investigation, the subject judge must be given adequate prior notice in writing of that decision and of the general scope and purpose of the additional investigation. The conduct of the investigation will be generally in accordance with the procedures set forth in Rules 13 through 16 for the conduct of an investigation by a special committee. However, if hearings are held, the council may limit testimony or the presentation of evidence to avoid unnecessary repetition of testimony and evidence before the special committee.

Rule 20(d) provides that council action must be taken by a majority of those members of the council who are not disqualified, except that a decision to remove a bankruptcy judge from office requires a majority of all the members of the council as required by 28 U.S.C. § 152(e). However, it is inappropriate to apply a similar rule to the less severe actions that a judicial council may take under the Act. If some members of the council are disqualified in the matter, their disqualification should not be given the effect of a vote against council action.

With regard to Rule 20(e), the judicial council, on the request of the subject judge, may recommend to the Director of the Administrative Office of the United States Courts that the subject judge be reimbursed for reasonable expenses, including attorneys' fees, incurred. The judicial council has the authority to recommend such reimbursement where, after investigation by a special committee, the complaint has been finally dismissed or concluded under subsection (b)(1) (A) or (B) of this Rule. It is contemplated that such reimbursement may be provided for the successful prosecution or defense of a proceeding under Rule 21(a) or (b), in other words, one that results in a Rule 20(b)(1)(A) or (B) dismissal or conclusion.

Rule 20(f) requires that council action normally be supported with a memorandum of factual determinations and reasons and that notice of the action be given to the complainant and

the subject judge. Rule 20(f) also requires that the notification to the complainant and the subject judge include notice of any right to petition for review of the council's decision under Rule 21(b).

ARTICLE VI. REVIEW BY JUDICIAL CONFERENCE COMMITTEE ON CONDUCT AND DISABILITY

21. Committee on Judicial Conduct and Disability

(a) Review by Committee. The Committee on Judicial Conduct and Disability, consisting of seven members, considers and disposes of all petitions for review under (b) of this Rule, in conformity with the Committee's jurisdictional statement. Its disposition of petitions for review is ordinarily final. The Judicial Conference of the United States may, in its sole discretion, review any such Committee decision, but a complainant or subject judge does not have a right to this review.

(b) Reviewable Matters.

(1) Upon petition. A complainant or subject judge may petition the Committee for review of a judicial-council order entered in accordance with:

(A) Rule 20(b)(1)(A), (B), (D), or (E); or

(B) Rule 19(b)(1) or (4) if one or more members of the judicial council dissented from the order on the ground that a special committee should be appointed under Rule 11(f); in that event, the Committee's review will be limited to the issue of whether a special committee should be appointed.

(2) Upon Committee's initiative. At its initiative and in its sole discretion, the Committee may review any judicial-council order entered under Rule 19(b)(1) or (4), but only to determine whether a special committee should be appointed. Before undertaking the review, the Committee must invite that judicial council to explain why it believes the appointment of a special committee is unnecessary, unless the reasons are clearly stated in the judicial council's order denying the petition for review. If the Committee believes that it would benefit from a submission by the subject judge, it may issue an appropriate request. If the Committee determines that a special committee should be appointed, the Committee must issue a written decision giving its reasons.

(c) Committee Vote. Any member of the Committee from the same circuit as the subject judge is disqualified from considering or voting on a petition for review. Committee decisions under (b) of this Rule must be by majority vote of the qualified Committee members. If only six members are qualified to vote on a petition for review, the decision must be made by a majority of a panel of five members drawn from a randomly selected list that rotates after each decision by a panel drawn from the list. The members who will determine the petition must be selected based on committee membership as of the date on which the petition is received. Those members selected to hear the petition should serve in that capacity until final disposition of the petition, whether or not their term of committee membership has ended. If only four members are qualified to vote, the Chief Justice must appoint, if available, an ex-member of the Committee or, if not, another United States judge to consider the petition.

(d) Additional Investigation. Except in extraordinary circumstances, the Committee will not conduct an additional investigation. The Committee may return the matter to the judicial council with directions to undertake an additional investigation. If the Committee conducts an additional investigation, it will exercise the powers of the Judicial Conference under 28 U.S.C. § 331.

(e) Oral Argument; Personal Appearance. There is ordinarily no oral argument or personal appearance before the Committee. In its discretion, the Committee may permit written submissions from the complainant or subject judge.

(f) Committee Decisions. Committee decisions under this Rule must be transmitted promptly to the Judicial Conference of the United States. Other distribution will be by the Administrative Office at the direction of the Committee chair.

(g) Finality. All orders of the Judicial Conference or of the Committee (when the Conference does not exercise its power of review) are final.

Commentary on Rule 21

This Rule is largely self-explanatory.

Rule 21(a) is intended to clarify that the delegation of power to the Judicial Conference Committee on Judicial Conduct and Disability to dispose of petitions does not preclude review of such dispositions by the Conference. However, there is no right to such review in any party.

Rules 21(b)(1)(B) and (b)(2) are intended to fill a jurisdictional gap as to review of dismissals or conclusions of complaints under Rule 19(b)(1) or (4). Where one or more members of a judicial council reviewing a petition have dissented on the ground that a special committee should have been appointed, the complainant or subject judge has the right to petition for review by the Committee but only as to that issue. Under Rule 21(b)(2), the Judicial Conference Committee on Judicial Conduct and Disability may review such a dismissal or conclusion in its sole discretion, whether or not such a dissent occurred, and only as to the appointment of a special committee. No party has a right to such review, and such review will be rare.

Rule 21(c) provides for review only by Committee members from circuits other than that of the subject judge. To avoid tie votes, the Committee will decide petitions for review by rotating panels of five when only six members are qualified. If only four members are qualified, the Chief Justice must appoint an additional judge to consider that petition for review.

Under this Rule, all Committee decisions are final in that they are unreviewable unless the Judicial Conference, in its discretion, decides to review a decision. Committee decisions, however, do not necessarily constitute final action on a complaint for purposes of Rule 24.

22. Procedures for Review

(a) Filing a Petition for Review. A petition for review of a judicial-council decision may be filed by sending a brief written statement to the Judicial Conference Committee on Judicial Conduct and Disability, addressed to:

Judicial Conference Committee on Judicial Conduct and Disability
Attn: Office of General Counsel
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, D.C. 20544

The Administrative Office will send a copy of the petition to the complainant or subject judge, as the case may be.

(b) Form and Contents of Petition for Review. No particular form is required. The petition must contain a short statement of the basic facts underlying the complaint, the history of its consideration before the appropriate judicial council, a copy of the judicial council's decision, and the grounds on which the petitioner seeks review. The petition for review must specify the date and docket number of the judicial-council order for which review is sought. The petitioner may attach any documents or correspondence arising in the course of the proceeding before the judicial council or its special committee. A petition should not normally exceed 20 pages plus necessary attachments.

(c) Time. A petition must be submitted within 63 days of the date of the order for which review is sought.

(d) Copies. Seven copies of the petition for review must be submitted, at least one of which must be signed by the petitioner or his or her attorney. If the petitioner submits a signed declaration of inability to pay the expense of duplicating the petition, the Administrative Office must accept the original petition and must reproduce copies at its expense.

(e) Action on Receipt of Petition for Review. The Administrative Office must acknowledge receipt of a petition for review submitted under this Rule, notify the chair of the Judicial Conference Committee on Judicial Conduct and Disability, and distribute the petition to the members of the Committee for their deliberation.

Commentary on Rule 22

Rule 22 is self-explanatory.

ARTICLE VII. MISCELLANEOUS RULES

23. Confidentiality

(a) General Rule. The consideration of a complaint by the chief judge, a special committee, the judicial council, or the Judicial Conference Committee on Judicial Conduct and Disability is confidential. Information about this consideration must not be disclosed by any judge or employee of the judicial branch or by any person who records or transcribes testimony except as allowed by these Rules. In extraordinary circumstances, a chief judge may disclose the existence of a proceeding under these Rules when necessary to maintain public confidence in the federal judiciary's ability to redress misconduct or disability.

(b) Files. All files related to complaints must be separately maintained with appropriate security precautions to ensure confidentiality.

(c) Disclosure in Decisions. Except as otherwise provided in Rule 24, written decisions of the chief judge, the judicial council, or the Judicial Conference Committee on Judicial Conduct and Disability, and dissenting opinions or separate statements of

members of the council or Committee may contain information and exhibits that the authors consider appropriate for inclusion, and the information and exhibits may be made public.

(d) Availability to Judicial Conference. On request of the Judicial Conference or its Committee on Judicial Conduct and Disability, the circuit clerk must furnish any requested records related to a complaint. For auditing purposes, the circuit clerk must provide access to the Committee to records of proceedings under the Act at the site where the records are kept.

(e) Availability to District Court. If the judicial council directs the initiation of proceedings for removal of a magistrate judge under Rule 20(b)(1)(D)(iii), the circuit clerk must provide to the chief judge of the district court copies of the report of the special committee and any other documents and records that were before the judicial council at the time of its decision. On request of the chief judge of the district court, the judicial council may authorize release to that chief judge of any other records relating to the investigation.

(f) Impeachment Proceedings. If the Judicial Conference determines that consideration of impeachment may be warranted, it must transmit the record of all relevant proceedings to the Speaker of the House of Representatives.

(g) Subject Judge's Consent. If both the subject judge and the chief judge consent in writing, any materials from the files may be disclosed to any person. In any such disclosure, the chief judge may require that the identity of the complainant, or of witnesses in an investigation conducted by a chief judge, a special committee, or the judicial council, not be revealed.

(h) Disclosure in Special Circumstances. The Judicial Conference, its Committee on Judicial Conduct and Disability, or a judicial council may authorize disclosure of information about the consideration of a complaint, including the papers, documents, and transcripts relating to the investigation, to the extent that disclosure is justified by special circumstances and is not prohibited by the Act. Disclosure may be made to judicial researchers engaged in the study or evaluation of experience under the Act and related modes of judicial discipline, but only where the study or evaluation has been specifically approved by the Judicial Conference or by the Judicial Conference Committee on Judicial Conduct and Disability. Appropriate steps must be taken to protect the identities of the subject judge, the complainant, and witnesses from public disclosure. Other appropriate safeguards to protect against the dissemination of confidential information may be imposed.

(i) Disclosure of Identity by Subject Judge. Nothing in this Rule precludes the subject judge from acknowledging that he or she is the judge referred to in documents made public under Rule 24.

(j) Assistance and Consultation. Nothing in this Rule precludes the chief judge or judicial council acting on a complaint filed under the Act from seeking the help of qualified staff or from consulting other judges who may be helpful in the disposition of the complaint.

Commentary on Rule 23

Rule 23 was adapted from the Illustrative Rules.

The Act applies a rule of confidentiality to "papers, documents, and records of proceedings related to investigations conducted under this chapter" and states that they may not

be disclosed "by any person in any proceeding," with enumerated exceptions. 28 U.S.C. § 360(a). Three questions arise: Who is bound by the confidentiality rule, what proceedings are subject to the rule, and who is within the circle of people who may have access to information without breaching the rule?

With regard to the first question, Rule 23(a) provides that judges, employees of the judicial branch, and those persons involved in recording proceedings and preparing transcripts are obliged to respect the confidentiality requirement. This of course includes subject judges who do not consent to identification under Rule 23(i).

With regard to the second question, Rule 23(a) applies the rule of confidentiality broadly to consideration of a complaint at any stage.

With regard to the third question, there is no barrier of confidentiality among a chief judge, judicial council, the Judicial Conference, and the Judicial Conference Committee on Judicial Conduct and Disability. Each may have access to any of the confidential records for use in their consideration of a referred matter, a petition for review, or monitoring the administration of the Act. A district court may have similar access if the judicial council orders the district court to initiate proceedings to remove a magistrate judge from office, and Rule 23(e) so provides.

In extraordinary circumstances, a chief judge may disclose the existence of a proceeding under these Rules. The disclosure of such information in high-visibility or controversial cases is to reassure the public that the federal judiciary is capable of redressing judicial misconduct or disability. Moreover, the confidentiality requirement does not prevent the chief judge from "communicat[ing] orally or in writing with . . . [persons] who may have knowledge of the matter," as part of a limited inquiry conducted by the chief judge under Rule 11(b).

Rule 23 recognizes that there must be some exceptions to the Act's confidentiality requirement. For example, the Act requires that certain orders and the reasons for them must be made public. 28 U.S.C. § 360(b). Rule 23(c) makes it explicit that memoranda supporting chief judge and council orders, as well as dissenting opinions and separate statements, may contain references to information that would otherwise be confidential and that such information may be made public. However, subsection (c) is subject to Rule 24(a) which provides the general rule regarding the public availability of decisions. For example, the name of a subject judge cannot be made public in a decision if disclosure of the name is prohibited by that Rule.

The Act makes clear that there is a barrier of confidentiality between the judicial branch and the legislative. It provides that material may be disclosed to Congress only if it is believed necessary to an impeachment investigation or trial of a judge. 28 U.S.C. § 360(a)(2). Accordingly, Section 355(b) of the Act requires the Judicial Conference to transmit the record of the proceeding to the House of Representatives if the Conference believes that impeachment of a subject judge may be appropriate. Rule 23(f) implements this requirement.

The Act provides that confidential materials may be disclosed if authorized in writing by the subject judge and by the chief judge. 28 U.S.C. § 360(a)(3). Rule 23(g) implements this requirement. Once the subject judge has consented to the disclosure of confidential materials related to a complaint, the chief judge ordinarily will refuse consent only to the extent necessary to protect the confidentiality interests of the complainant or of witnesses who have testified in

investigatory proceedings or who have provided information in response to a limited inquiry undertaken pursuant to Rule 11. It will generally be necessary, therefore, for the chief judge to require that the identities of the complainant or of such witnesses, as well as any identifying information, be shielded in any materials disclosed, except insofar as the chief judge has secured the consent of the complainant or of a particular witness to disclosure, or there is a demonstrated need for disclosure of the information that, in the judgment of the chief judge, outweighs the confidentiality interest of the complainant or of a particular witness (as may be the case where the complainant is delusional or where the complainant or a particular witness has already demonstrated a lack of concern about maintaining the confidentiality of the proceedings).

Rule 23(h) permits disclosure of additional information in circumstances not enumerated. For example, disclosure may be appropriate to permit a prosecution for perjury based on testimony given before a special committee. Another example might involve evidence of criminal conduct by a judge discovered by a special committee.

Subsection (h) also permits the authorization of disclosure of information about the consideration of a complaint, including the papers, documents, and transcripts relating to the investigation, to judicial researchers engaged in the study or evaluation of experience under the Act and related modes of judicial discipline. The Rule envisions disclosure of information from the official record of complaint proceedings to a limited category of persons for appropriately authorized research purposes only, and with appropriate safeguards to protect individual identities in any published research results that ensue. In authorizing disclosure, the judicial council may refuse to release particular materials when such release would be contrary to the interests of justice, or that constitute purely internal communications. The Rule does not envision disclosure of purely internal communications between judges and their colleagues and staff.

Under Rule 23(j), chief judges and judicial councils may seek staff assistance or consult with other judges who may be helpful in the process of complaint disposition; the confidentiality requirement does not preclude this. The chief judge, for example, may properly seek the advice and assistance of another judge who the chief judge deems to be in the best position to communicate with the subject judge in an attempt to bring about corrective action. As another example, a new chief judge may wish to confer with a predecessor to learn how similar complaints have been handled. In consulting with other judges, of course, the chief judge should disclose information regarding the complaint only to the extent the chief judge deems necessary under the circumstances.

24. Public Availability of Decisions

(a) General Rule; Specific Cases. When final action has been taken on a complaint and it is no longer subject to review, all orders entered by the chief judge and judicial council, including any supporting memoranda and any dissenting opinions or separate statements by members of the judicial council, must be made public, with the following exceptions:

(1) if the complaint is finally dismissed under Rule 11(c) without the appointment of a special committee, or if it is concluded under Rule 11(d) because of voluntary corrective action, the publicly available materials must not disclose the name of the subject judge without his or her consent.

(2) if the complaint is concluded because of intervening events, or dismissed at any time after a special committee is appointed, the judicial council must determine whether the name of the subject judge should be disclosed.

(3) if the complaint is finally disposed of by a privately communicated censure or reprimand, the publicly available materials must not disclose either the name of the subject judge or the text of the reprimand.

(4) if the complaint is finally disposed of under Rule 20(b)(1)(D) by any action other than private censure or reprimand, the text of the dispositive order must be included in the materials made public, and the name of the subject judge must be disclosed.

(5) the name of the complainant must not be disclosed in materials made public under this Rule unless the chief judge orders disclosure.

(b) Manner of Making Public. The orders described in (a) must be made public by placing them in a publicly accessible file in the office of the circuit clerk or by placing the orders on the court's public website. If the orders appear to have precedential value, the chief judge may cause them to be published. In addition, the Judicial Conference Committee on Judicial Conduct and Disability will make available on the Federal Judiciary's website, www.uscourts.gov, selected illustrative orders described in paragraph (a), appropriately redacted, to provide additional information to the public on how complaints are addressed under the Act.

(c) Orders of Judicial Conference Committee. Orders of this Committee constituting final action in a complaint proceeding arising from a particular circuit will be made available to the public in the office of the clerk of the relevant court of appeals. The Committee will also make such orders available on the Federal Judiciary's website, www.uscourts.gov. When authorized by the Committee, other orders related to complaint proceedings will similarly be made available.

(d) Complaints Referred to the Judicial Conference of the United States. If a complaint is referred to the Judicial Conference under Rule 20(b)(1)(C) or 20(b)(2), materials relating to the complaint will be made public only if ordered by the Judicial Conference.

Commentary on Rule 24

Rule 24 is adapted from the Illustrative Rules and the recommendations of the Breyer Committee.

The Act requires the circuits to make available only written orders of a judicial council or the Judicial Conference imposing some form of sanction. 28 U.S.C. § 360(b). The Judicial Conference, however, has long recognized the desirability of public availability of a broader range of orders and other materials. In 1994, the Judicial Conference "urge[d] all circuits and courts covered by the Act to submit to the West Publishing Company, for publication in Federal Reporter 3d, and to Lexis all orders issued pursuant to [the Act] that are deemed by the issuing circuit or court to have significant precedential value to other circuits and courts covered by the Act." Report of the Proceedings of the Judicial Conference of the United States, Mar. 1994, at 28. Following this recommendation, the 2000 revision of the Illustrative Rules contained a public availability provision very similar to Rule 24. In 2002, the Judicial Conference again voted to encourage the circuits "to submit non-routine public orders disposing of complaints of judicial misconduct or disability for publication by on-line and print services." Report of the Proceedings of the Judicial Conference of the United States, Sept. 2002, at 58. The Breyer Committee Report further emphasized that "[p]osting such orders on the judicial branch's public website would not only benefit judges directly, it would also encourage scholarly commentary and analysis of the orders." Breyer Committee Report, 239 F.R.D. at 216. With these considerations in mind, Rule 24 provides for public availability of a wide range of materials.

Rule 24 provides for public availability of orders of the chief judge, the judicial council, and the Judicial Conference Committee on Judicial Conduct and Disability and the texts of any memoranda supporting their orders, together with any dissenting opinions or separate statements by members of the judicial council. However, these orders and memoranda are to be made public only when final action on the complaint has been taken and any right of review has been exhausted. The provision that decisions will be made public only after final action has been taken is designed in part to avoid public disclosure of the existence of pending proceedings. Whether the name of the subject judge is disclosed will then depend on the nature of the final action. If the final action is an order predicated on a finding of misconduct or disability (other than a privately communicated censure or reprimand) the name of the judge must be made public. If the final action is dismissal of the complaint, the name of the subject judge must not be disclosed. Rule 24(a)(1) provides that where a proceeding is concluded under Rule 11(d) by the chief judge on the basis of voluntary corrective action, the name of the subject judge must not be disclosed. Shielding the name of the subject judge in this circumstance should encourage informal disposition.

If a complaint is dismissed as moot, or because intervening events have made action on the complaint unnecessary, after appointment of a special committee, Rule 24(a)(2) allows the judicial council to determine whether the subject judge will be identified. In such a case, no final decision has been rendered on the merits, but it may be in the public interest -- particularly if a judicial officer resigns in the course of an investigation -- to make the identity of the judge known.

Once a special committee has been appointed, and a proceeding is concluded by the full council on the basis of a remedial order of the council, Rule 24(a)(4) provides for disclosure of the name of the subject judge.

Finally, Rule 24(a)(5) provides that the identity of the complainant will be disclosed only if the chief judge so orders. Identifying the complainant when the subject judge is not identified would increase the likelihood that the identity of the subject judge would become publicly known, thus circumventing the policy of nondisclosure. It may not always be practicable to shield the complainant's identity while making public disclosure of the judicial council's order and supporting memoranda; in some circumstances, moreover, the complainant may consent to public identification.

25. Disqualification

(a) General Rule. Any judge is disqualified from participating in any proceeding under these Rules if the judge, in his or her discretion, concludes that circumstances warrant disqualification. If the complaint is filed by a judge, that judge is disqualified from participating in any consideration of the complaint except to the extent that these Rules provide for a complainant's participation. A chief judge who has identified a complaint under Rule 5 is not automatically disqualified from considering the complaint.

(b) Subject Judge. A subject judge is disqualified from considering the complaint except to the extent that these Rules provide for participation by a subject judge.

(c) Chief Judge Not Disqualified from Considering a Petition for Review of a Chief Judge's Order. If a petition for review of a chief judge's order entered under Rule 11(c), (d), or (e) is filed with the judicial council in accordance with Rule 18, the chief judge is not disqualified from participating in the council's consideration of the petition.

(d) **Member of Special Committee Not Disqualified. A member of the judicial council who serves on a special committee, including the chief judge, is not disqualified from participating in council consideration of the committee's report.**

(e) **Subject Judge's Disqualification After Appointment of a Special Committee. Upon appointment of a special committee, the subject judge is automatically disqualified from participating in any proceeding arising under the Act or these Rules as a member of any special committee, the judicial council of the circuit, the Judicial Conference of the United States, and the Judicial Conference Committee on Judicial Conduct and Disability. The disqualification continues until all proceedings on the complaint against the subject judge are finally terminated with no further right of review.**

(f) **Substitute for Disqualified Chief Judge. If the chief judge is disqualified from participating in consideration of the complaint, the duties and responsibilities of the chief judge under these Rules must be assigned to the most-senior active circuit judge not disqualified. If all circuit judges in regular active service are disqualified, the judicial council may determine whether to request a transfer under Rule 26, or, in the interest of sound judicial administration, to permit the chief judge to dispose of the complaint on the merits. Members of the judicial council who are named in the complaint may participate in this determination if necessary to obtain a quorum of the judicial council.**

(g) **Judicial-Council Action When Multiple Judges Are Disqualified. Notwithstanding any other provision in these Rules to the contrary,**

(1) a member of the judicial council who is a subject judge may participate in its disposition if:

(A) participation by one or more subject judges is necessary to obtain a quorum of the judicial council;

(B) the judicial council finds that the lack of a quorum is due to the naming of one or more judges in the complaint for the purpose of disqualifying that judge or judges, or to the naming of one or more judges based on their participation in a decision excluded from the definition of misconduct under Rule 3(h)(3); and

(C) the judicial council votes that it is necessary, appropriate, and in the interest of sound judicial administration that one or more subject judges be eligible to act.

(2) otherwise disqualified members may participate in votes taken under (g)(1)(B) and (g)(1)(C).

(h) **Disqualification of Members of the Judicial Conference Committee. No member of the Judicial Conference Committee on Judicial Conduct and Disability is disqualified from participating in any proceeding under the Act or these Rules because of consultations with a chief judge, a member of a special committee, or a member of a judicial council about the interpretation or application of the Act or these Rules, unless the member believes that the consultation would prevent fair-minded participation.**

Commentary on Rule 25

Rule 25 is adapted from the Illustrative Rules.

Subsection (a) provides the general rule for disqualification. Of course, a judge is not disqualified simply because the subject judge is on the same court. However, this subsection recognizes that there may be cases in which an appearance of bias or prejudice is created by circumstances other than an association with the subject judge as a colleague. For example, a judge may have a familial relationship with a complainant or subject judge. When such circumstances exist, a judge may, in his or her discretion, conclude that disqualification is warranted.

Subsection (e) makes it clear that the disqualification of the subject judge relates only to the subject judge's participation in any proceeding arising under the Act or these Rules as a member of a special committee, judicial council, Judicial Conference, or the Judicial Conference Committee. The Illustrative Rule, based on Section 359(a) of the Act, is ambiguous and could be read to disqualify a subject judge from service of any kind on each of the bodies mentioned. This is undoubtedly not the intent of the Act; such a disqualification would be anomalous in light of the Act's allowing a subject judge to continue to decide cases and to continue to exercise the powers of chief circuit or district judge. It would also create a substantial deterrence to the appointment of special committees, particularly where a special committee is needed solely because the chief judge may not decide matters of credibility in his or her review under Rule 11.

While a subject judge is barred by Rule 25(b) from participating in the disposition of the complaint in which he or she is named, Rule 25(e) recognizes that participation in proceedings arising under the Act or these Rules by a judge who is the subject of a special committee investigation may lead to an appearance of self-interest in creating substantive and procedural precedents governing such proceedings; Rule 25(e) bars such participation.

Under the Act, a complaint against the chief judge is to be handled by "that circuit judge in regular active service next senior in date of commission." 28 U.S.C. § 351(c). Rule 25(f) provides that seniority among judges other than the chief judge is to be determined by date of commission, with the result that complaints against the chief judge may be routed to a former chief judge or other judge who was appointed earlier than the chief judge. The Rules do not purport to prescribe who is to preside over meetings of the judicial council. Consequently, where the presiding member of the judicial council is disqualified from participating under these Rules, the order of precedence prescribed by Rule 25(f) for performing "the duties and responsibilities of the chief circuit judge under these Rules" does not apply to determine the acting presiding member of the judicial council. That is a matter left to the internal rules or operating practices of each judicial council. In most cases the most senior active circuit judge who is a member of the judicial council and who is not disqualified will preside.

Sometimes a single complaint is filed against a large group of judges. If the normal disqualification rules are observed in such a case, no court of appeals judge can serve as acting chief judge of the circuit, and the judicial council will be without appellate members. Where the complaint is against all circuit and district judges, under normal rules no member of the judicial council can perform the duties assigned to the council under the statute.

A similar problem is created by successive complaints arising out of the same underlying grievance. For example, a complainant files a complaint against a district judge based on alleged misconduct, and the complaint is dismissed by the chief judge under the statute. The complainant may then file a complaint against the chief judge for dismissing the first complaint, and when that complaint is dismissed by the next senior judge, still a third complaint may be filed. The threat is that the complainant will bump down the seniority ladder until, once again, there is no member of the court of appeals who can serve as acting chief judge for the purpose of the next complaint. Similarly, complaints involving the merits of litigation may involve a series of decisions in which many judges participated or in which a rehearing en banc was denied by the court of appeals, and the complaint may name a majority of the judicial council as subject judges.

In recognition that these multiple-judge complaints are virtually always meritless, the judicial council is given discretion to determine: (1) whether it is necessary, appropriate, and in the interest of sound judicial administration to permit the chief judge to dispose of a complaint where it would otherwise be impossible for any active circuit judge in the circuit to act, and (2) whether it is necessary, appropriate, and in the interest of sound judicial administration, after appropriate findings as to need and justification are made, to permit subject judges of the judicial council to participate in the disposition of a petition for review where it would otherwise be impossible to obtain a quorum.

Applying a rule of necessity in these situations is consistent with the appearance of justice. See, e.g., In re Complaint of Doe, 2 F.3d 308 (8th Cir. Jud. Council 1993) (invoking the rule of necessity); In re Complaint of Judicial Misconduct, No. 91-80464 (9th Cir. Jud. Council 1992) (same). There is no unfairness in permitting the chief judge to dispose of a patently insubstantial complaint that names all active circuit judges in the circuit.

Similarly, there is no unfairness in permitting subject judges, in these circumstances, to participate in the review of a chief judge's dismissal of an insubstantial complaint. The remaining option is to assign the matter to another body. Among other alternatives, the council may request a transfer of the petition under Rule 26. Given the administrative inconvenience and delay involved in these alternatives, it is desirable to request a transfer only if the judicial council determines that the petition is substantial enough to warrant such action.

In the unlikely event that a quorum of the judicial council cannot be obtained to consider the report of a special committee, it would normally be necessary to request a transfer under Rule 26.

Rule 25(h) recognizes that the jurisdictional statement of the Judicial Conference Committee contemplates consultation between members of the Committee and judicial participants in proceedings under the Act and these Rules. Such consultation should not automatically preclude participation by a member in that proceeding.

26. Transfer to Another Judicial Council

In exceptional circumstances, a chief judge or a judicial council may ask the Chief Justice to transfer a proceeding based on a complaint identified under Rule 5 or filed under Rule 6 to the judicial council of another circuit. The request for a transfer may be made at any stage of the proceeding before a reference to the Judicial Conference under Rule 20(b)(1)(C) or 20(b)(2) or a petition for review is filed under Rule 22. Upon receiving such

a request, the Chief Justice may refuse the request or select the transferee judicial council, which may then exercise the powers of a judicial council under these Rules.

Commentary on Rule 26

Rule 26 is new; it implements the Breyer Committee's recommended use of transfers. Breyer Committee Report, 239 F.R.D. at 214-15.

Rule 26 authorizes the transfer of a complaint proceeding to another judicial council selected by the Chief Justice. Such transfers may be appropriate, for example, in the case of a serious complaint where there are multiple disqualifications among the original council, where the issues are highly visible and a local disposition may weaken public confidence in the process, where internal tensions arising in the council as a result of the complaint render disposition by a less involved council appropriate, or where a complaint calls into question policies or governance of the home court of appeals. The power to effect a transfer is lodged in the Chief Justice to avoid disputes in a council over where to transfer a sensitive matter and to ensure that the transferee council accepts the matter.

Upon receipt of a transferred proceeding, the transferee council shall determine the proper stage at which to begin consideration of the complaint -- for example, reference to the transferee chief judge, appointment of a special committee, etc.

27. Withdrawal of Complaints and Petitions for Review

(a) Complaint Pending Before Chief Judge. With the chief judge's consent, a complainant may withdraw a complaint that is before the chief judge for a decision under Rule 11. The withdrawal of a complaint will not prevent a chief judge from identifying or having to identify a complaint under Rule 5 based on the withdrawn complaint.

(b) Complaint Pending before Special Committee or Judicial Council. After a complaint has been referred to a special committee for investigation and before the committee files its report, the complainant may withdraw the complaint only with the consent of both the subject judge and either the special committee or the judicial council.

(c) Petition for Review. A petition for review addressed to a judicial council under Rule 18, or the Judicial Conference Committee on Judicial Conduct and Disability under Rule 22 may be withdrawn if no action on the petition has been taken.

Commentary on Rule 27

Rule 27 is adapted from the Illustrative Rules and treats the complaint proceeding, once begun, as a matter of public business rather than as the property of the complainant. Accordingly, the chief judge or the judicial council remains responsible for addressing any complaint under the Act, even a complaint that has been formally withdrawn by the complainant.

Under subsection 27(a), a complaint pending before the chief judge may be withdrawn if the chief judge consents. Where the complaint clearly lacked merit, the chief judge may accordingly be saved the burden of preparing a formal order and supporting memorandum. However, the chief judge may, or be obligated under Rule 5, to identify a complaint based on allegations in a withdrawn complaint.

If the chief judge appoints a special committee, Rule 27(b) provides that the complaint may be withdrawn only with the consent of both the body before which it is pending (the special committee or the judicial council) and the subject judge. Once a complaint has reached the stage of appointment of a special committee, a resolution of the issues may be necessary to preserve public confidence. Moreover, the subject judge is given the right to insist that the matter be resolved on the merits, thereby eliminating any ambiguity that might remain if the proceeding were terminated by withdrawal of the complaint.

With regard to all petitions for review, Rule 27(c) grants the petitioner unrestricted authority to withdraw the petition. It is thought that the public's interest in the proceeding is adequately protected, because there will necessarily have been a decision by the chief judge and often by the judicial council as well in such a case.

28. Availability of Rules and Forms

These Rules and copies of the complaint form as provided in Rule 6(a) must be available without charge in the office of the clerk of each court of appeals, district court, bankruptcy court, or other federal court whose judges are subject to the Act. Each court must also make these Rules and the complaint form available on the court's website, or provide an Internet link to the Rules and complaint form that are available on the appropriate court of appeals' website.

29. Effective Date

These Rules will become effective 30 days after promulgation by the Judicial Conference of the United States.

APPENDIX

COMPLAINT FORM

A two-page complaint form follows.

Judicial Council of the _____ Circuit

COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY

To begin the complaint process, complete this form and prepare the brief statement of facts described in item 5 (below). The RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, adopted by the Judicial Conference of the United States, contain information on what to include in a complaint (Rule 6), where to file a complaint (Rule 7), and other important matters. The rules are available in federal court clerks' offices, on individual federal courts' Web sites, and on www.uscourts.gov.

Your complaint (this form and the statement of facts) should be typewritten and must be legible. For the number of copies to file, consult the local rules or clerk's office of the court in which your complaint is required to be filed. Enclose each copy of the complaint in an envelope marked "COMPLAINT OF MISCONDUCT" or "COMPLAINT OF DISABILITY" and submit it to the appropriate clerk of court. **Do not put the name of any judge on the envelope.**

1. Name of Complainant: _____

Contact Address: _____

_____

Daytime telephone: (___) _____

2. Name(s) of Judge(s): _____

Court: _____

3. Does this complaint concern the behavior of the judge(s) in a particular lawsuit or lawsuits?

[ ] Yes [ ] No

If "yes," give the following information about each lawsuit:

Court: _____

Case Number: _____

Docket number of any appeal to the ____ Circuit: _____

Are (were) you a party or lawyer in the lawsuit?

[ ] Party [ ] Lawyer [ ] Neither

If you are (were) a party and have (had) a lawyer, give the lawyer's name, address, and telephone number:

_____

_____

_____

4. Have you filed any lawsuits against the judge?

[ ] Yes [ ] No

If "yes," give the following information about each such lawsuit:

Court: _____

Case Number: _____

Present status of lawsuit: _____

Name, address, and telephone number of your lawyer for the lawsuit against the judge:

_____

_____

_____

Court to which any appeal has been taken in the lawsuit against the judge:

_____

Docket number of the appeal: _____

Present status of the appeal: _____

5. **Brief Statement of Facts.** Attach a brief statement of the specific facts on which the claim of judicial misconduct or disability is based. Include what happened, when and where it happened, and any information that would help an investigator check the facts. If the complaint alleges judicial disability, also include any additional facts that form the basis of that allegation.

6. **Declaration and signature:**

I declare under penalty of perjury that the statements made in this complaint are true and correct to the best of my knowledge.

(Signature)_____ (Date)_____

In The Senate of The United States
Sitting as a Court of Impeachment

In re:	)
Impeachment of G. Thomas Porteous, Jr.,	)
United States District Judge for the	)
Eastern District of Louisiana	)
	)

JUDGE G. THOMAS PORTEOUS, JR.'S MOTION
REQUESTING FUNDING FOR HIS DEFENSE

NOW BEFORE THE SENATE, comes respondent, the Honorable G. Thomas Porteous, Jr., a Judge of the United States District Court for the Eastern District of Louisiana, and files this Motion Requesting Funding for His Defense. In support, Judge Porteous respectfully submits as follows:

On June 29, 2010, the Senate Impeachment Trial Committee (the "Committee") Staff held a conference call with counsel for all parties. During that conference call, the Committee Staff advised that Judge Porteous did not need to file a separate motion requesting funds to reimburse witnesses for the costs associated with their travel to Washington to testify at the evidentiary hearing, as the Committee had construed language in one of Judge Porteous's prior filings as just such a request, and would be issuing guidance on that issue. Judge Porteous appreciates the Committee's assistance in this regard. Judge Porteous now submits the instant motion to request additional funding, which is necessary to prepare his defense.

Constitutional due process, as well of basic notions of fundamental fairness, requires that a federal officer accused of improper conduct allegedly warranting removal

from office be afforded a meaningful opportunity to defend himself.[1] Such an opportunity requires that the officer have access to the resources and funds necessary to properly prepare and present his defense. Moreover, to fulfill its Constitutional duty "to try all Impeachments" (U.S. CONST. art. I, § 3, cl. 6), the Senate must have before it a complete record, adduced in a fair proceeding, upon which to deliberate and render a decision.[2] That record should not be limited to only that evidence selected and presented by the House Managers – in their capacity as prosecutors.

To ensure that each of these requirements is satisfied in this case, Judge Porteous requests that the Senate provide certain, limited funding, which is necessary to permit

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[1] Indeed, impeachment trials "must be conducted in keeping with the basic principles of due process that have been enunciated by the court and ironically, by the Congress itself," and "[f]airness and due process must be the watchword whenever a branch of the United States government conducts a trial, whether it be in a criminal case, a civil case or a case of impeachment." *Hastings v. United States*, 802 F. Supp. 490, 492, 504 (D.D.C. 1992).

See also Rules and Administration Meeting of the Impeachment Trial Committee Against Judge G. Thomas Porteous, Jr., April 13, 2010, http://www.senate.gov/general/impeachment_hearing_porteous_041310.htm (Senator and Committee Chair McCaskill stating that the "guiding force of this matter has to be due process"; Senator and Committee Vice-Chair Hatch stating that "we must proceed with the utmost seriousness and dedication to fairness").

[2] Indeed, as a prior Senate Impeachment Trial Committee has held:

> [T]he Senate has an interest in the development of a record that fully illuminates the matters that it must consider in rendering a judgment that under the Constitution only the Senate may make.

Impeachment Trial Committee, Disposition of Pretrial Issues [First Order], 101st Cong., 1st sess., 135 Cong. Rec. S. 6449-02 (June 9, 1989) (relating to the articles of impeachment against Judge Alcee L. Hastings).

him to present his defense.[3] Specifically, in addition to the travel and related expenses (including applicable *per diem* fees) of witnesses subpoenaed at Judge Porteous's request to testify in the trial of this matter,[4] Judge Porteous requests that the Senate provide funds for the following:

1. The travel and related expenses of Judge Porteous so that he may travel to Washington, D.C., assist in his own defense, and participate in all necessary proceedings – including the trial of this matter;
2. Legal expenses (including items such as postal charges, courier fees, and reproduction costs, but excluding attorneys' fees) incurred by Judge Porteous in his defense of this matter; and
3. Other necessary and reasonable expenses incurred by Judge Porteous's new counsel to investigate and prepare Judge Porteous's defense in this matter (including travel and related expenses, *per diem* fees, and deposition fees and transcript costs, but excluding attorneys' fees).

Given his limited financial resources, which have been significantly strained by this litigation, Judge Porteous is presently unable to pay these costs himself. He, therefore, lacks the financial wherewithal necessary to properly defend himself in this case. The House Managers, and House Impeachment Counsel, on the other hand, have

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[3] Payment of such funds by the Senate Impeachment Trial Committee is authorized by Section 6(a) of Senate Resolution 458, which provides that "[t]he actual and necessary expenses of the committee ... shall be paid from the contingent fund of the Senate...." S. Res. 458, 111th Cong. (Mar. 17, 2010).

[4] Based on the statements of Committee Staff during the June 29, 2010 conference call, Judge Porteous understands that the Committee intends to issue guidance on this issue.

had access to vast federal funds and resources to investigate and pursue their charges against Judge Porteous. Moreover, the House Managers and their counsel will be able to continue to call upon government funding and resources, pay for travel and *per diem* expenses of witnesses, and pay for associated costs necessary to prosecute the impeachment. To ensure that Judge Porteous has an equal opportunity to call witnesses to testify in his defense, and thus provide the Senate with a complete record in this matter, fundamental due process requires that the Senate provide Judge Porteous with the funding needed to present his defense.

In addition to being mandated by Constitutional and equitable considerations, granting Judge Porteous the funding that he requests is supported by long-standing Senate precedent and custom. Specifically, in connection with his 1989 impeachment, U.S. District Court Judge Walter L. Nixon, Jr. requested that the Senate provide funds to cover (among other things) the costs associated with bringing testifying witnesses to Washington. The then-presiding Senate Impeachment Trial Committee considered Judge Nixon's request and, on July 25, 1989, issued a pretrial order stating that:

> The Senate will follow its usual practice of paying the costs of bringing the witnesses for whom it issues subpoenas to Washington to testify in this proceeding.

See Impeachment Trial Committee, Disposition of Pretrial Motions, First Order, 101st Cong., 1st sess., 135 Cong. Rec. S. 10673 (Sept. 6, 1989).[5] Judge Porteous requests that

[5] While the 1989 Senate Impeachment Trial Committee ultimately declined to grant Judge Nixon's request to provide funds to cover his attorney's fees and out-of-pocket defense costs, there is no indication in the Committee's Order that Judge Nixon was financially unable to pay those expenses – as is the case with Judge Porteous. There is also no indication that Judge Nixon requested that the Senate pay the costs of his travel to Washington, nor is there any indication that the Senate would not have paid those

the Senate continue to follow its "usual practice" and make available funds to cover the expenses outlined above.

WHEREFORE, Judge Porteous respectfully requests that the Senate authorize payment of the expenses requested in this Motion.

Respectfully submitted,

/s/ Jonathan Turley
Jonathan Turley
2000 H Street, N.W.
Washington, D.C. 20052
(202) 994-7001

/s/ Daniel C. Schwartz
Daniel C. Schwartz
P.J. Meitl
Daniel T. O'Connor
BRYAN CAVE LLP
1155 F Street, N.W., Suite 700
Washington, D.C. 20004
(202) 508-6000

Counsel for G. Thomas Porteous, Jr.
United States District Court Judge for the
Eastern District of Louisiana

Dated: June 29, 2010

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expenses had he so requested. Due to the extremely limited financial resources available to Judge Porteous, and in order to ensure the fairness of these proceedings, the Senate should provide the additional, yet limited, funding that Judge Porteous requests.

CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2010, I served copies of the foregoing by electronic means on the House Managers, through counsel, at the following email addresses:

Alan Baron – abaron@seyfarth.com

Mark Dubester – mark.dubester@mail.house.gov

Harold Damelin – Harold.damelin@mail.house.gov

Kirsten Konar – kkonar@seyfarth.com

Jessica Klein – jessica.klein@mail.house.gov

/s/ Daniel T. O'Connor

United States Senate
SENATE IMPEACHMENT
TRIAL COMMITTEE
WASHINGTON, DC 20510–6326

DISPOSITION OF JUDGE G. THOMAS PORTEOUS, JR.'S MOTION REQUESTING FUNDING FOR HIS DEFENSE

On June 29, 2010, Judge G. Thomas Porteous, Jr., filed a Motion Requesting Funding for His Defense. This Motion included requests for reimbursement of travel expenses incurred by witnesses and Judge Porteous as well as various legal and counsel costs. The House of Representatives has not filed any response to this Motion.

Consistent with past Committee practice, the Committee denies Judge Porteous's request for reimbursement of his travel expenses as well as for funds to cover legal and counsel costs.

The Committee grants the Motion with respect to the travel expenses of subpoenaed witnesses. Travel arrangements are to be made through the Chief Clerk of the Impeachment Trial Committee at government rates consistent with Senate travel regulations.

Dated: July 26, 2010

CLAIRE McCASKILL
Chairman

ORRIN G. HATCH
Vice Chairman